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THESIS

THE POLITICS OF REFUGEE POLICIES IN KENYA AND UGANDA

by

Jjemba R. Ssejjemba

June 2018

Thesis Advisor:
Second Reader:

Rachel L. Sigman
Anne M. Baylouny

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THE POLITICS OF REFUGEE POLICIES IN KENYA AND UGANDA

Jjemba R. Ssejjemba
Major, Uganda Army
Bachelor of Arts, Uganda Martyrs University, 2012

Submitted in partial fulfillment of the
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June 2018**

Approved by: Rachel L. Sigman
Advisor

Anne M. Baylouny
Second Reader

Mohammed M. Hafez
Chair, Department of National Security Affairs

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ABSTRACT

Of the estimated 22.5 million refugees worldwide, approximately 26% live in sub-Saharan Africa. With continuing conflicts in South Sudan, Somalia, and the Democratic Republic of Congo (DRC), refugee numbers will likely grow in the Great Lakes Region (GLR). The lives and opportunities of refugees in Africa vary greatly from country to country, yet we have little understanding of why countries adopt more restrictive or open refugee policies.

This thesis compares refugee policies in Kenya and Uganda to examine the factors influencing them to adopt restrictive or permissive policies. Migration experts often argue that problems associated with specific refugee groups shape the host nation's restrictive policies. This thesis argues that, instead, two main factors—a country's historical relationship with refugee populations and the politics surrounding refugees—influence whether countries adopt more open or restrictive policies. Once in place, these policies become self-reinforcing. Kenya's more restrictive policies have led to even more restrictions on refugees, lowering the quantity and quality of their protection. Uganda's permissive policies, by contrast, have allowed for more progressive programs and, thus, the admission of many more refugees. This thesis finds that the international community can work with host nations to improve the refugee situation in the GLR.

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LIST OF ACRONYMS AND ABBREVIATIONS

ACHPR	African Charter on Human and Peoples' Rights
ADF	Allied Democratic Forces
AMISOM	African Union Mission in Somalia
AU	African Union
CARA	Control of Aliens Act
DRC	Democratic Republic of Congo
GLR	Great Lakes Region
HRW	Human Rights Watch
ICU	Islamic Courts Union
IDPC	Internally Displaced Peoples' Camp
LRA	Lord's Resistance Army
NEP	North Eastern Province
NFD	Northern Frontier District
NRA	National Resistance Army
NRS	National Secretariat of Refugees
OAU	Organization for African Unity
OLF	Olomo Liberation Front
PRS	Protracted Refugee Situation
ReHoPE	Refugee and Host Community Empowerment Strategy
SALW	Small Arms and Light Weapons
SAP	Structural Adjustment Program
SRS	Self Reliance Strategy
UN	United Nations
UNDP	United Nations Development Program
UNHCR	United Nations High Commissioner for Refugees
WB	World Bank

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The views expressed in this thesis are entirely those of the author, and they do not, in any case, represent the official position of the Uganda Peoples' Defence Force.

Dedication

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I. INTRODUCTION

As old conflicts in Africa's Great Lakes Region (GLR), especially in Burundi, DRC, South Sudan, and Somalia persist,¹ and new ones from non-state actors like al-Shabaab and Allied Democratic Forces (ADF) emerge, the refugee crisis seems to be protracted. Although all countries that signed or ratified the 1951 United Nations Convention on the Status of Refugees have the obligation to protect and safeguard the rights and freedoms of refugees at the most basic level, many have rejected refugees while others accept them but enact laws and policies that violate those rights. Some countries perceive refugees as a burden, asserting that refugees pose security, economic, social, political, and environmental challenges to host nations and their communities.² In response to the current refugee crisis, Kenya has adopted a "closed-door" refugee policy that is very restrictive, while Uganda operates an "open-door" refugee policy that allows refugees from all countries irrespective of their numbers.

A. MAJOR RESEARCH QUESTION

Why does Uganda host more refugees than other countries in the GLR,³ including Kenya? More generally, what factors affect countries' refugee policies? Kenya and Uganda are neighboring countries in the same geographical location that share the same opportunities and challenges, like terrorism by al-Shabaab, but they enact different refugee policies, and the numbers of refugees they host vary significantly. This thesis argues that two main factors explain why countries adopt more restrictive or more open policies: historical ties to refugee populations and political rhetoric surrounding refugees.

¹ "Global Appeal 2018–2019," UNHCR, accessed May 20, 2018, <http://www.unhcr.org/en-us/publications/fundraising/5a0c05027/unhcr-global-appeal-2018-2019-full-report.html?query=2018%20refugee%20data>.

² James Milner, *Refugees, the State and the Politics of Asylum in Africa* (UK: Palgrave Macmillan, 2009), 1–2.

³ The Great Lakes Region comprises the following countries: Burundi, Democratic Republic of Congo (DRC), Kenya, Rwanda, Tanzania, and Uganda. Gaim Kibreab, "Forced Migration in the Great Lakes and Horn of Africa," *Oxford Handbook of Refugee and Forced Migration Studies* (June 2014): 2, <http://dx.doi.org/10.1093/oxfordhb/9780199652433.013.0046>.

B. SIGNIFICANCE OF THE RESEARCH

The research examines how and why Kenya and Uganda manage refugees differently. It is important for policymakers to understand how Uganda, a small country in the GLR, with low levels of economic development, high rates of unemployment, especially among the youths, terrorism threats from al-Shabaab and the ADF, and other internal challenges hosts a significant number of refugees and, simultaneously, maintains its stability. There is a general perception among some refugee host nations that refugees are a source of instability and exert a lot of pressure on host nations' budgets and their communities by competing for scarce resources like wood-fuel, food, water, health facilities, schools, and roads.⁴ In fact, in 2016, Uganda and the UNHCR spent \$300 million in providing health, sanitation facilities, education, and security for refugees.⁵ Whereas Uganda is known for its "open door" refugee policy, it cannot manage the current burden alone, yet forceful repatriation contradicts international law.⁶ The dilemma calls for the intervention of the international community to respond to this humanitarian crisis.

Conversely, whereas refugees pose significant challenges to host nations, benefits also accrue from hosting them. Kevin Shellito observes that refugees are a resource for development, which some countries have not realized.⁷ Refugees are a source of cheap labor and, at the same time, provide a market for domestically produced items. This research identifies the most effective refugee policies and programs that require the fewest resources, maintain national security, improve the quality of refugee protection, and above all, benefit both refugees and their host communities.

⁴ Kevin Shellito, "The Economic Effect of Refugee Crises on Host Countries and Implications for the Lebanese Case" (Joseph Wharton Scholars Program, University of Pennsylvania, 2016), 2, https://repository.upenn.edu/joseph_wharton_scholars/3.

⁵ Pascal Kwesiga, "Uganda Seeks Sh 30 Trillion for Refugees," *New Vision*, May 10, 2017, accessed December 20, 2018, https://www.newvision.co.ug/new_vision/news/1452931/uganda-seeks-sh30-trillion-refugees.

⁶ Halima Athumani, "Uganda Hosting Donor Summit to Raise \$8 Billion for Refugees," VOA, June 19, 2017, <https://www.voanews.com/a/uganda-international-donor-summit/3906642.html>.

⁷ Kevin Shellito, "The Economic Effect of Refugee Crises on Host Countries and Implications for the Lebanese Case," Joseph Wharton Scholars Program, University of Pennsylvania, (2016): 2, accessed December 20, 2017, https://repository.upenn.edu/joseph_wharton_scholars/3.

Whereas the international legal frameworks on refugees are generally universal,⁸ there is limited literature on why African countries that signed the 1951 UN Convention on Refugees adopt different policies to manage refugees. In order to contribute to the existing literature on refugees, this thesis analyzes the factors that influence a country's decisions to adopt restrictive or permissive refugee policies and programs. Understanding this complex situation is not only a matter of academic research, but also necessary for policymakers who are considering enacting restrictive refugee policies including building border fences to curtail refugee entry. The research reminds policymakers and the international community that the international conventions on refugees oblige states to receive, protect, and respect the freedoms of refugees. To fulfill that mandate, member countries should embrace the international conventions and adopt policies that protect refugees. Thus, analyzing how a country's refugee policies and programs respond to the refugee crisis, mitigate the security challenges, and benefit both refugees and their host communities will be of keen interest to researchers and organizations that, like the UNHCR, handle refugees.

C. THE REFUGEE SITUATION IN KENYA AND UGANDA

Kenya has been a refugee host nation since the early 1970s when it received refugees from Uganda who were fleeing Amin's terror regime. According Rauf Mazou, by January 2016, Kenya hosted 593,881 refugees and asylum seekers, the majority of them are from Somalia.⁹ According to the UNHCR, however, by January 2018, the number of refugees in Kenya has reduced to 486,460,¹⁰ yet the conflict in South Sudan is still ongoing. Further, the country has experienced a series of terrorist attacks by al-Shabaab, who are also from Somalia, and Kenyan authorities blame refugees for contributing to this

⁸ In some cases, however, countries may not have signed them.

⁹ Rauf Mazou, "Kenya Comprehensive Refugee Programme 2016: Programming for Solutions," *United Nations High Commissioner for Refugees* (April 2016): 4, accessed March 12, 2018, <https://reliefweb.int/sites/reliefweb.int/files/resources/2016-KCRP5.13fv.pdf>.

¹⁰ UNHCR Kenya 2017, "Figures at a Glance," accessed April 10, 2018, <http://www.unhcr.org/ke/figures-at-a-glance>.

insecurity.¹¹ For that reason, there have been significant policy changes from the permissive “open-door” approach to more restrictive ones. A number of factors, which are not connected to the existence of refugees, have influenced Kenya’s decision to adopt the new refugee policies and programs. It is, therefore, significant to establish why Kenya approved such policies, which should not be an excuse for failing to fulfill its obligations to protect.

By contrast, despite its numerous internal challenges including explosive population growth, unemployment, insecurity, corruption, and power and infrastructure constraints,¹² Uganda has been an “open-door” refugee host country. Uganda’s hosting of refugees began in the early 1940s when it hosted Polish refugees, housing them in Nyabyeya and Kojja, in the Masindi and Mukono districts, respectively.¹³ While Uganda has long maintained an “open-door” perspective, the current influx of refugees into a country with inadequate resources raises serious concerns and may reach a point of non-sustainability. By the of 2016, Uganda was hosting 982,716 refugees, but in May 2017, the number increased to 1,252,470 refugees, making Uganda the largest refugee host country in Africa.¹⁴ According to the 2017 United Nations Development Program (UNDP) report, “the situation of refugees living in Uganda is protracted. More recently, prolonged conflict in the surrounding countries of South Sudan, Burundi, and DRC, have led to new refugee arrivals in Uganda.”¹⁵ Further, Uganda’s borders are open to refugees from all countries at a time when other countries with more resources are rejecting them for security reasons.

¹¹ James Wilson Neil, “Kenya’s Hash New Security Laws Put Hundreds of Thousands of Refugees at Risk,” *Conversation*, December 30, 2014, accessed April 15, 2018, <http://theconversation.com/kenyas-hash-new-security-laws-put-hundreds-of-thousands-of-refugees-at-risk-35789>.

¹² “U.S. Relations with Uganda,” U.S. Department of State, 2017, accessed February 20, 2018, <https://www.state.gov/r/pa/ei/bgn/2963.htm>.

¹³ Deborah, Mulumba, “Humanitarian Assistance and Its Implication on the Integration of Refugees in Uganda: Some Observations,” *Makerere University Institutional Repository* (December 2014):1, accessed February 19, 2018, <http://opendocs.ids.ac.uk/opendocs/handle/123456789/4809>.

¹⁴ Rosa Malango, “Uganda’s Contribution to Refugee Protection and Management,” United Nations Development Programme (2017): 3, accessed May 11, 2018, <http://www.ug.undp.org/content/uganda/en/home/library/SustainableInclusiveEconomicDevelopmentProgramme/UgandascontributiontoRefugeeProtectionandManagement.html>.

¹⁵ Malango, “Uganda’s Contribution to Refugee Protection and Management,” 1.

D. LITERATURE REVIEW

This section reviews the existing literature on the factors that influence countries to formulate refugee policies and programs. There are various sources of literature pertaining to hosting refugees in Africa, but this literature review centers on the factors that explain why Uganda hosts many more refugees than Kenya. Both Kenya and Uganda face the same security threats of terrorism by al-Shabaab, they are located in the same refugee-prone region of the GLR of Africa (as Figure 1 shows), and they receive refugees from the same places.

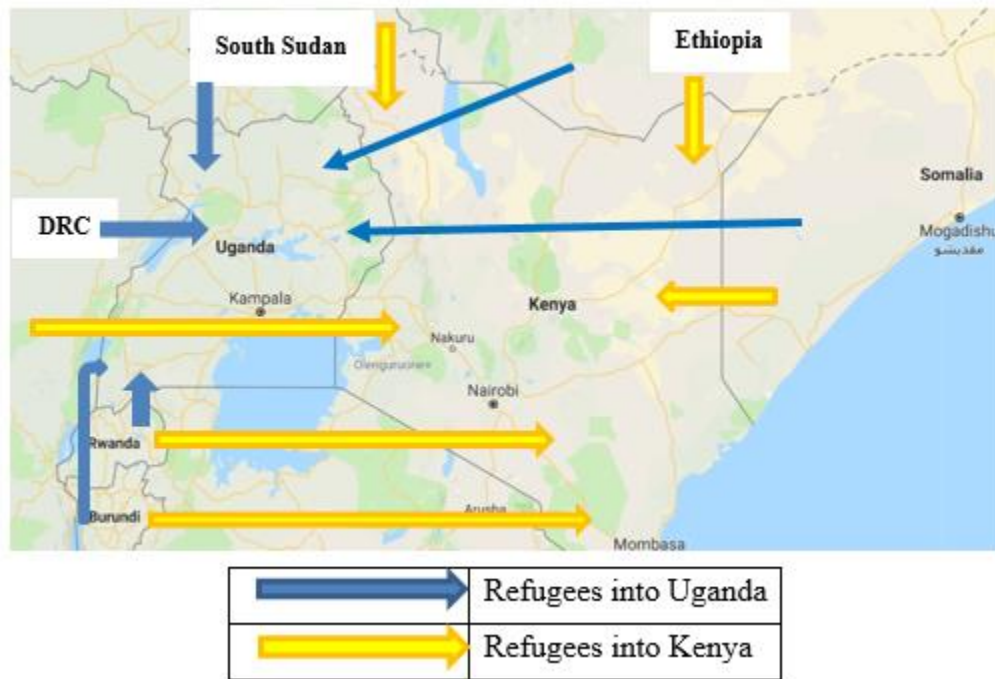


Figure 1. Refugees into Uganda and Kenya from Refugee-Generating Countries.¹⁶

Even though Kenya and Uganda have those similarities, they have responded differently to the refugee crisis. Based on the similar characteristics of both Kenya and Uganda, the

¹⁶ Adapted from “Uganda and Kenya Maps,” Google Maps, accessed April 10, 2018, <https://www.google.com/maps/@1.3722154,35.7669962,5.97z>.

literature review aims to give the reader an understanding of how international refugee policies and the perceived threats shape each country's refugee policies. It provides a foundation for answering the major research question by providing a theoretical explanation on why some countries reject refugees while others accept them. The difference in policies clarify why some countries host more refugees while others accept few or none. This section proceeds as follows. Subsection 1 reviews literature on refugee hosting models adopted by both Kenya and Uganda. Subsection 2 reviews the international and regional legal refugee frameworks, and Subsection 3 covers the literature on the existing theories that explain why countries may reject or accept refugees.

1. Refugee Hosting Models in Kenya and Uganda

There are two common refugee hosting models that refugee host countries in the GLR have adopted: local integration and the camp model. The two models result from the absence of durable solutions for settling refugees because of prolonged conflicts. This subsection first reviews the literature on the camp model that Kenya uses to manage its refugees, and then, the local integration that Uganda adopted as its refugee hosting model.

Few scholars have attempted to define the refugee camp model. Harrell-Bond, however, defines a camp using its characteristic feature of the life and the restrictions in the camp, and she contends that,

The most essential feature of a camp is the authoritarian character of their administration; they are like 'total institutions,' places where, as in prisons or mental hospitals, everything is highly organized, where the inhabitants are depersonalized and where people become numbers without names. Another characteristic of camps, especially those where people have no access to land, is the persistent shortage of food.¹⁷

Important to note in the above-mentioned characteristics of a camp is limited freedom of movement, and refugees do not have the liberty to find gainful employment, which makes them more dependent on relief agencies and host nations and less beneficial to their host

¹⁷ Harrell-Bond, "Are Refugee Camps Good for Children?" 1.

communities.¹⁸ Karen Jacobsen asserts that refugees exert a lot of pressure on scarce resources like water, land, and roads and compete for jobs with the host communities.¹⁹ She argues that one of the reasons why some countries restrict refugees to camps is to attract the attention of the UNHCR so that it can manage and provide assistance to the refugees. This research analyzes both the settlement/local integration and the camp models in establishing the link between the type of settlement in relation to the number of refugees. What is common to both, however, is that there are strong reasons that host nations advance to adopt a specific refugee hosting model. The next subsection reviews the literature on theories that explain the choice of refugee hosting models.

In contrast, many scholars have attempted to define integration with regards to refugees. Sarah Dryden-Peterson and Lucy Hovil argue that “disagreement over the mere definition of the word ‘integration’ makes analysis of this topic difficult and has prevented adequate research.”²⁰ They cite Barbara Harrell-Bond’s description of integration as “a situation in which host and refugee communities are able to co-exist, sharing the same resources—both economic and social—with no greater mutual conflict than that which exists within the host community.”²¹ In the absence of long-lasting solutions to the prolonged refugee condition in the GLR, the local integration model allows refugees to settle and interact freely with their host communities.

According to Harrell-Bond, integration is one of the desired principles of refugee protection provided for under the 1951 UN Convention. She asserts that, though the convention does not specify integration, the term “assimilation” that it uses implies that

¹⁸ Anna Schmidt, “FMO Thematic Guide: Camps Versus Settlements,” *Forced Migration Online* (2003): 1990–96.

¹⁹ Karen, Jacobsen, “Can Refugees Benefit the State? Refugee Resources and African Statebuilding,” *The Journal of Modern African Studies* 40, no. 4 (2002): 577–596.

²⁰ Sarah Dryden-Peterson and Lucy Hovil, “New Issues in Refugee Research,” *UNHCR Evaluation and Policy Unit*, no. 93 (September 2003): 3, accessed February 11, 2018, https://www.ecoi.net/en/file/local/1307655/1226_1273070702_3f8189ec4.pdf.

²¹ Dryden-Peterson and Hovil.

refugees are supposed to mix within their host communities.²² Under the local integration model, freedom of movement and the right to work are guaranteed, which makes refugees not perfectly self-reliant but less dependent on relief aid.

Furthermore, Uganda's Refugee Act of 2006 provides for integration. Section 29 of the Act provides for the incorporation of all other international laws regarding the rights, freedoms, and obligations of refugees, treating them as Ugandan citizens.²³ The integration model has some challenges and benefits, however, and this thesis investigates how Uganda has applied it to effectively benefit both the refugees and the host communities. The next subsection reviews literature on both international and regional refugee frameworks.

2. International and Regional Legal Frameworks

There are international and regional laws that govern the hosting and management of refugees. The international laws specifically apply to all countries that ratified the 1951 UN Convention on the Status of Refugees and its 1967 Protocols. In the African context, the African Union (AU) Convention specifically addresses issues concerning refugees in Africa. This sub-section reviews literature of the international and regional legal frameworks that Kenya and Uganda ratified with respect to refugee protection and hosting of refugees.

There are various international laws on the hosting of refugees, their rights, freedoms, and obligations, but the two specific international laws regarding refugees are the 1951 UN Convention on the Status of Refugees and its 1967 Protocol on the Status of Refugees. Both Kenya and Uganda ratified those conventions. Kenya ratified the UN Convention on Refugees on May 16, 1966 and thereafter, in 1981, ratified the 1967 Protocol while Uganda ratified both the convention and its protocol on September 27,

²² Barbara Harrell-Bond, "Are Refugee Camps Good for Children?" *New Issues in Refugee Research*, Working Paper No. 29, Geneva: UNHCR (August 2000): 3, accessed January 4, 2018, <http://www.unhcr.org/3ae6a0c64.pdf>.

²³ Uganda, "Refugee Act 2006 Act 21," accessed March 2, 2018. <http://www.refworld.org/docid/4b7baba52.html>.

1976.²⁴ Their ratifications imply that both Kenya and Uganda are bound by the terms of the convention and its protocol.

Regarding international laws for refugees, Guy S. Goodwin-Gill argues that, whereas sovereign states have the right to enact their national laws, they must do it to respect international laws, especially those they ratified. He asserts that,

Like every sovereign power, this competence must be exercised within and according to law, and the state's right to control the admission of non-citizens is subject to certain well-defined exceptions in favor [sic] of those in search of refuge, among others. Moreover, the state, which seeks to exercise migration controls outside its territory, for example, through the physical interception, "interdiction," and return of asylum seekers and forced migrants, may also be liable for actions, which breach those of its international obligations, which apply extraterritorially.²⁵

The previous narrative implies that international laws are a source of other laws from which countries can adopt regional or national laws or treaties. With regards to the protection of refugees, whereas providing food and accommodation are of particular importance, Goodwin-Gill further asserts that protection goes beyond material assistance. He states that,

Protection in this sense means using the legal tools, including treaties and national laws, which prescribe or implement the obligations of states and which are intended to ensure that no refugee in search of asylum is penalized, expelled, or refouled, that every refugee enjoys the full complement of rights and benefits to which he or she is entitled as a refugee; and that the human rights of every refugee are guaranteed. Protection is thus based in the law; it may be wider than rights, but it begins with rights and rights permeate the whole.²⁶

²⁴ United Nations High Commissioner for Refugee (UNHCR), "State Parties to the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol," accessed December 29, 2017, <http://www.unhcr.org/3b73b0d63.html>.

²⁵ Guy S. Goodwin-Gill, "The International Law of Refugee Protection," in *The International Law of Refugee Protection*, eds. Elena Fiddian-Qasmiyeh, Gil Loescher, Katy Long, and Nando Sigona (Oxford: Oxford University Press, August 2014), 1–2, <https://doi.org/10.1093/oxfordhb/9780199652433.013.0021>.

²⁶ Goodwin-Gill, 2.

Thus, the 1951 Convention provides key provisions regarding refugees including the circumstances for determining a refugee. Article 1(A)2 of the 1951 UN Convention on the Status of Refugees describes circumstances for defining a refugee:

As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.²⁷

The above-mentioned definition of a refugee is inadequate in the African context, however. Milner observes that “a central feature of this definition remained, however, its exclusive reference to individualized persecution.”²⁸ Apart from persecution, this thesis also observes that the definition does not include refugees who leave their countries due to civil wars, yet they constitute the bulk of refugees housed both in Kenya and Uganda. In fact, the UNHCR 2004b report, as James Milner and Gil Loescher report, describe the causes of displacement and the nature of refugees in most countries, arguing that,

protracted refugee situations stem from political impasses. They are not inevitable, but are rather the result of political action and inaction, both in the country of origin (the persecution and violence that led to flight) and in the country of asylum. They endure because of ongoing problems in the country of origin, and stagnate and become protracted as a result of responses to refugee inflows, typically involving restrictions on refugee movement and employment possibilities, and confinement to camps.²⁹

With respect to the limitations contained in the 1951 definition of a refugee, in 1969, African states under their continental umbrella, the Organization for African Unity (OAU),

²⁷ Michel Moussalli, “Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees,” Office of the United Nations High Commissioner for Refugees Geneva (January 1992) accessed December 20, 2017, <http://immi.se/asyl/handbook.htm>.

²⁸ Milner, *Refugees, the State and the Politics of Asylum in Africa*, 7.

²⁹ James Milner and Gil Loescher, “Responding to Protracted Refugee Situations: Lessons from a Decade of Discussion,” *Forced Migration Policy Briefing* no. 6 (January 2011): 19, <http://hdl.handle.net/10315/8011>.

adopted another law, the 1969 Convention on the Specific Aspects of Refugee Problems in Africa. Milner further observes that the OAU Convention maintained the definition of refugee as defined under the 1951 UN Convention, and reinforced it with another definition to reflect the type of refugees in Africa. Thus, Article 1(2) of the OAU Convention clarifies the term refugee and states,

The term “refugee” shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.³⁰

Although Kenya and Uganda both ratified the 1951 UN Convention on the Status of Refugees and the 1969 African Convention on Refugees, and therefore have a duty to receive and protect refugees, they have adopted different policies and ways of managing refugees. There are various theories that may attempt to explain why countries adopt different models of hosting refugees, and why countries treat refugees differently despite the existence of common international and regional legal frameworks. The next subsection reviews literature of some of those theories.

3. Theories of Refugee Policies

Scholars have advanced several theories to explain the factors that influence countries to adopt different refugee hosting models and management practices. I focus on six main theories that explain differences in the adoption of refugee models. Those theories include population policy, cultural compatibility, social receptiveness, assimilation, the pluralistic model, and residential segregation theory. This section reviews them as listed, not in order of importance.

First, the population policy theory suggests that a country’s population policies determine the number of refugees a country can accommodate or resettle. This may also determine the model of hosting depending on the value or threat host nations perceive from refugees. One of the reasons refugee host nations reject refugees or restrict them to camps

³⁰ Milner, *Refugees, the State and the Politics of Asylum in Africa*, 7.

relates to security. Scholars like Idean Saleyan and Kristian Skrede Gleditsch argue that refugees are associated with the spread of conflicts, either in their host nations or neighboring countries. They contend that countries that host a significant number of refugees are at risk of having civil wars and terrorism.³¹ They further argue that large refugee movements especially from conflict or war-torn countries increase the likelihood of spreading conflicts in host nations. This may explain why some countries may consider rejecting refugees.

Additionally, the population theory suggests that some countries accept hosting refugees because of the benefits that accrue from their hosting. For example, in underpopulated countries or countries with aging populations like Germany, they may want refugees to supplement the country's numerical strength and provide labor to support the country's existing population. Such countries see refugees as a resource that can contribute to economic development especially by providing cheap labor. In this case, the resettlement of refugees becomes simple because communities want to exploit the cheap labor that refugees provide. In contrast, in countries that are densely populated and have a sufficient labor force, they are less likely to settle refugees.³² In the first place, refugees may compete with their host communities for scarce jobs or may not be skilled enough for host nations to offer them jobs. This may complicate refugee resettlement and eventual integration and instead may lead authorities either to reject them or to host them in camps.

The second theory explaining refugee policy is cultural compatibility. Egon F. Kunz contends that in a linguistically hostile host nation, communities may isolate refugees and consequently exclude them.³³ Failure to keep up with the unusual cultural norms or values hinders the resettlement process. Accordingly, refugees may change the ethnic balances within the receiving nation. Andrew Shaver and Yang-Yang Zhou assert that a change in the demographic composition within the host communities may incite a

³¹ Idean Salehyan and Kristian Skrede Gleditsch, "Refugees and the Spread of Civil War," *International Organization* 60 no.2 (April 2006): 335, <https://doi.org/10.1017/S0020818306060103>.

³² Egon F. Kunz, "Exile and Resettlement: Refugee Theory," *The International Migration Review* 15, no. ½ (Spring–Summer, 1981): 48, <http://www.jstor.org/stable/2545323>.

³³ Kunz, 46–7.

conflict.³⁴ This is most likely when refugee camps accommodate militarized refugee populations and the camps become fertile grounds for the recruitment of insurgents. They further argue that refugees within the camps may themselves not be combatants, but they can facilitate the mobilization and transfer of war materials and other resources to armed combatants, especially when they share the same ethnic groups.³⁵

Furthermore, when an influx of refugees brings about ethnic imbalances, it may challenge state capacity and legitimacy. Weiner argues that, “conflicts create refugees, but refugees can also create conflicts.”³⁶ He asserts that,

refugees have launched terrorist attacks within their host country, illegally smuggled arms, allied with the domestic opposition against host-government policies, participated in drug traffic, and in other ways eroded governments’ willingness to admit refugees. Palestinians, Sikhs, Croats, Kurds, Armenians, Sri Lankan Tamils, and Northern Irish, among others, have been regarded with suspicion by intelligence and police authorities of other countries and their requests for asylum have been scrutinized not only for whether they have a well-founded fear of persecution, but for whether their presence might constitute a threat to the host country.³⁷

Whitaker observes, however, that whereas authorities in governments exaggerate refugee threats, some of those fears are genuine, and they explain why some countries reject refugees.³⁸

On the other hand, when communities receive refugees with whom they share the same languages, cultures, religions or food habits, integration becomes easier because they share the assistance from refugee agencies or the donor community. Jacobsen shows that whereas the international refugee agencies design this assistance for refugees, they also

³⁴ Andrew Shaver, and Yang-Yang Zhou, “Do Refugees Spread or Reduce Conflict?” *Scholar, Princeton* (July 2017): 7, https://scholar.princeton.edu/sites/default/files/ashaver/files/refugeescivilwar_revision.pdf.

³⁵ Shaver and Yang-Yang Zhou, 7.

³⁶ Weiner, “Security, Stability, and International Migration,” 109.

³⁷ Weiner, “Security, Stability, and International Migration,” 109–110.

³⁸ Weiner, 110.

make it available to the host communities so that they do not reject refugees.³⁹ She further states that in countries where host communities are likely to reject refugees, the UNHCR adopts measures to increase the friendliness of the host communities, to include “benefiting the local community through improvements in infrastructure in areas of water, health, and roads, etc.”⁴⁰ She cites many countries like Tanzania, Uganda, and Zambia where the implementation of such programs has benefited not only the refugees but also both their host nations and their communities.

The third theory that can explain integration comes from the pluralistic model. The pluralistic model is closely related to cultural compatibility but emphasizes accommodating people from various cultural backgrounds. Healey asserts that the pluralistic model is based on the multicultural background of communities that involves the acceptance of multiple cultures, which facilitates integration.⁴¹ Healey advances this theory and divides it into two parts: cultural and structural pluralism. Whereas in cultural pluralism groups maintain their identity like language or religion, in structural pluralism groups adopt and modify their cultures for the purposes of being accepted in the new communities but are not integrated.

The fourth theory that explains whether a country accepts or rejects refugees is the social receptiveness theory. The social receptiveness theory may also predict whether communities can resettle and integrate refugees or confine them in specific camps. According to Kunz, augmentative communities are more likely to accept refugees than monistic communities. Augmentative societies can accommodate divergent cultures and are therefore ready to welcome newcomers with different cultures.⁴² Like in the cultural compatibility theory, augmentative societies benefit from the refugee assistance. This assistance is in the form of food and non-food items like bedding, clothes, housewares, and

³⁹ Jacobsen, “Can Refugees Benefit the State? Refugee Resources and African Statebuilding,” 581.

⁴⁰ Jacobsen, 581.

⁴¹ Joseph Healey, *Race, Ethnicity, Gender, and Class: The Sociology of Group Conflict and Change*, (United Kingdom: Pine Gorge Press, 2011), 44.

⁴² Kunz, “Exile and Resettlement: Refugee Theory,” 48.

shelter items. The sharing of refugee assistance facilitates local integration, which a country can adopt as its refugee hosting model.

Alternatively, the social receptiveness theory suggests that monistic societies are less hospitable to newcomers whom they believe can dilute their cultures, their ways of life, and can generate competition with the host communities. Refugees may struggle sharing limited resources like food, water, jobs, firewood, or houses with the host communities who in certain instances are also needy. Beth Elise Whitaker asserts that maintaining refugees requires a lot of funds, yet the economic impact of refugees is in most cases minimal and negligible.⁴³ Whitaker further argues that when communities do not share the benefits that accrue from hosting refugees, it leads to resentment and may degenerate into serious conflicts.

Additionally, the social receptiveness theory may explain why countries blame refugees for degrading the environment and consequently reject them. Gaim Kibreab argues that “refugees remain in segregated sites and hence are not bound by local traditions of resource management. Consequently, they tend to over-exploit renewable resources, and disregard their long-term sustainability.”⁴⁴ Kibreab argues that when refugees are settled among the locals, they will be bound by the hosts’ cultures to conserve and protect the environment.

Assimilation is another theory that can explain the possibility of refugee integration. Joseph Healey describes assimilation theory as a process where a new group starts sharing cultures and norms with the dominant group, which in the end facilitates integration.⁴⁵ This theory suggests that as the new group becomes assimilated into the dominant society, differences between the two societies tend to disappear, leading to

⁴³ Beth Elise Whitaker, “Refugees in Western Tanzania: The Distribution of Burdens and Benefits Among Local Hosts,” *Journal of Refugee Studies* 15, no. 4 (December 2002): 342–348, <https://doi.org/10.1093/jrs/15.4.339>.

⁴⁴ Gaim Kibreab, “Environmental Causes and Impact of Refugee Movements: A Critique of the Current Debate,” *Disasters* 21, no. 1 (March 1997): 29, <https://doi.org/10.1111/1467-7717.00042>.

⁴⁵ Joseph Healey, *Race, Ethnicity, Gender, and Class: The Sociology of Group Conflict and Change*, 44.

assimilation. According to some scholars like Wilbur Zelinsky and Barrett A. Lee, this is the “melting pot.” As a principal requirement, the two societies are expected to contribute to the new culture and uniformly formulate another ethos and possibly a new civilization.⁴⁶ Zelinsky and Lee further argue that whereas the assimilation model can attempt to explain the possibility of the new group to assimilate, it does not explain fully the behaviors of the recent migrant group that may hinder integration. This implies that since assimilation theory is not uniformly applicable to all groups of people, especially the smaller groups that are not accommodated into the *melting pot*, integration may be difficult.

In addition to the assimilation theory, residential segregation theory, which regards benefits from refugees, may also predict the resettlement method and the benefits that may accrue from hosting refugees. George Borjas argues that under residential segregation host nations separate refugees from their host communities out of fear of the perceived negative impacts related to their hosting. In this case, refugees are out of touch with their host communities.⁴⁷ According to Borjas, this hinders local communities from benefiting from their refugees. Further, Borjas observes that keeping migrants away from the rest of their communities hinders assimilation, which further complicates their integration.

Finally, some of these theories may explain historical ties that influence countries to either reject or accept refugees. For example, the population theory may explain Kenya’s restrictive policies on the number of refugees in the country. The Kenyan authorities claim that refugee populations compete with the host communities for the scarce resources and put a lot of pressure on the country’s budget and other resources. The population theory contends that countries reject other people for fear of competition with the host communities. Other theories like social receptiveness and residual segregation may equally explain why Kenya adopted restrictive policies. The population theory is inadequate to explain why Uganda admits many refugees. It suggests that communities accept new

⁴⁶ Wilbur Zelinsky and Barrett A. Lee, “Heterolocalism: An Alternative Model of the Sociospatial Behaviour of Immigrant Ethnic Communities,” *International Journal of Population Geography* 4, no. 4 (January 1998), 281–298, http://www.uni-miskolc.hu/~ecomojud/Zelinsky_Lee_1998.pdf.

⁴⁷ George J. Borjas, “Ethnic Enclaves and Assimilation,” *Swedish Economic Policy Review* 7, no. 2 (2000), 117–8, <http://www.government.se/contentassets/9c0449dd5ee74aa68f24e1fc96721095/george-j.-borgas-ethnic-enclaves-and-assimilation>.

communities because of the benefits that accrue from their hosting. Whereas there are benefits that accrue from hosting refugees, Uganda's decision to admit refugees irrespective of their numbers or country of origin is influenced by the Pan-African ideology but not material benefits from refugees. Alternatively, theories like cultural compatibility, pluralism, social receptiveness, and assimilation suggest sharing, integration, mutual benefit, and coexistence, which may explain Uganda's permissive refugee policies. These theories advance the understanding of why countries may adopt different refugee policies and treat refugees differently. This brings us to the potential explanation of the factors that influence Kenya and Uganda to adopt different refugee policies. The next section covers the hypothesis of the research.

E. HYPOTHESES

There are two factors that shape whether countries adopt more restrictive or more open policies: historical ties to refugee populations and the political rhetoric surrounding refugees.

First, in Kenya, weak and conflictual historical ties with Somalis have enabled politicians to depict refugees as security threats who are undeserving of dignified protection. Kenya's historical negative perception about Somalis (who constitute the biggest refugee population) as a security burden have influenced its decision to adopt restrictive refugee policies. Kenya's "closed-door" policy, its Security Laws (Amendment) Act of 2014, requires that the number of refugees in the country should not exceed 150,000.⁴⁸ In addition to limiting the number of refugees, Kenya's encampment policy, contained in both its Refugee Act of 2006 and the Security Laws (Amendment) Act of 2014, confine refugees in camps. The confinement of refugees limits their freedoms of movement and work where they cannot become self-sufficient even in their protracted situations; hence, they remain dependent on relief aid.

⁴⁸ Hanibal Goitom, "Refugee Law and Policy: Kenya," *Law Library of Congress* (March 2016), accessed April 11, 2018, <http://www.loc.gov/law/help/refugee-law/kenya.php>.

Second, in Uganda, the Pan-African ideology and historical close ties with neighboring populations have led to more open policies that accommodate refugees from all countries irrespective of their numbers. Uganda's "open-door" policy, which is entrenched in the 2006 Refugee Act, allows refugees from all countries, irrespective of their numbers, and permits local integration and resettlement. The local integration and resettlement management models empower refugees to be self-sufficient after a very short period of time, hence reducing the state's burden of providing for refugees. Further, local integration fosters harmony between refugees and their hosts that reduces the possibility of conflicts.

Finally, the two different policies—the "closed-door" policy for Kenya and the "open-door" policy for Uganda—are self-reinforcing. Kenya's restrictive policies allow fewer refugees and create conflicts between refugees and their host communities. Alternatively, Uganda's permissive policies permit many more refugees and allow local integration and programs that benefit both refugees and their hosts. Therefore, a country with more permissive refugee policies is likely to encounter fewer challenges with refugees and may host many more refugees than one with restrictive policies.

F. RESEARCH DESIGN

In examining why countries adopt different policies and hosting models, this research compares Kenya's refugee policies with Uganda's. The thesis compares Kenya and Uganda because they have similar characteristics, opportunities, and challenges but operate different refugee policies. Both countries are in the same geographical region (GLR), which is prone to conflicts that generate refugees, and they share common borders. Further, they both ratified the 1951 UN Convention and the 1969 African Convention on Refugees and, therefore, have the same legal duty to protect the rights and freedoms of refugees. Additionally, they are facing the same threat of terrorism by al-Shabaab, which may require the same solutions. Both countries have troops under the African Union Mission in Somalia (AMISOM), fighting a common enemy (al-Shabaab). The two countries have different policies that relate to the management and protection of refugees,

however. So why, in 2018, does Uganda host more refugees (1.3 million),⁴⁹ well over two times the number of refugees in Kenya (486,460) in the same year?⁵⁰

Accordingly, to effectively answer the major research question, this thesis uses the existing literature on international and regional legal frameworks that both Uganda and Kenya ratified and compares their national policies. Further, to analyze the perceived and real threats that refugees pose to the two countries and the possible benefits that accrue from them, the research uses various sources on refugees from the UNHCR and reports from human rights agencies, journals, publications, and newspapers. Crucially, the UNHCR is responsible for the welfare and administration of refugees, and it annually updates its data on refugees worldwide. Additionally, human rights agencies fight for the rights and freedoms of refugees, and their reports are useful in understanding refugee policies. Also, newspapers cover stories on refugees in the GLR and, often, keep track of issues that may lead to humanitarian crises.

G. THESIS OVERVIEW

This thesis consists of four chapters. The first chapter introduced the research question, the significance of the research, and literature review including: refugee hosting models, international and regional legal frameworks, the theories explaining refugee hosting models, and why countries manage refugees differently. The second chapter explores and applies the hypotheses to the case of Kenya. It explores Kenya's evolving refugee policies, from the more permissive, but fragmented, policies of the early 1970s to the more restrictive ones of the 2000s. It further discusses the factors that influence Kenya's restrictive refugee policies and the effects on Kenya's security. Chapter III covers Uganda and assesses those aspects of the refugee policies that explain its progressive refugee policies and management. It further demonstrates how the progressive refugee policies and

⁴⁹ John Masaba, "Uganda Now 3rd Top Refugee Hosting Nation in the World," *New Vision*, June 21, 2017, accessed November 1, 2017, http://www.newvision.co.ug/new_vision/news/1456081/uganda-3rd-refugee-hosting-nation-world.

⁵⁰ "Figures at a Glance," UNHCR Kenya 2017, accessed May 21, 2018. <http://www.unhcr.org/ke/figures-at-a-glance>.

management programs have enabled Uganda to host a significant number of refugees and respond positively to the protracted refugee situation in the GLR. Chapter IV concludes the research with lessons learned, recommends areas for future research, and general recommendations that can inform policy and strategy on refugee protection and management.

II. KENYA'S REFUGEE POLICIES RESPONDING TO THE DYNAMIC SECURITY SITUATION IN THE GREAT LAKES REGION

Chapter I discussed how Kenya came to be a refugee host nation and explored the need for a comparative study of Kenya and Uganda in trying to establish why the two countries have different refugee policies. It further observed that though Kenya agreed to host refugees, it adopted new policies that limit the number of refugees in the country and restricts them to spatially segregated camps. This chapter covers the key aspects of Kenya's refugee policies and management. It argues that Kenya's weak and conflictual historical ties with Somalis have enabled politicians to depict refugees as security threats and undeserving of the benefits they receive, in order to justify the restrictive policies. These policies have not helped to address the security issues in Kenya.

To support this argument, this chapter proceeds as follows: Section A covers Kenya's evolving refugee policies before 2006, when it adopted the 2006 Refugee Act. Section B discusses Kenya's security dynamics in the 2000s, which some authorities have credited to the uncontrolled number of refugees in the country. Section C explores Kenya's new refugee policies in response to changes in security. The new policies confine refugees into camps and limit their movement and number. Section D presents the effects of policy changes on Kenya's security and shows that the new policies have not addressed the security issues. Section E analyzes the factors that drive Kenya's restrictive refugee policies, which reduce the quantity and quality of refugee protection, and section F concludes the chapter.

A. KENYA'S EVOLVING REFUGEE POLICIES

Kenya is both a refugee-generating and a refugee host nation in the GLR. According to the UNHCR, by the end of January 2018, there were 486,460 refugees in Kenya.⁵¹ Kenya is a refugee host nation because of its geographical location and its porous borders. Hanibal Goitom argues that "the country's location in a conflict-prone area" is the

⁵¹ UNHCR Kenya, "Figures at a Glance."

reason why it is one of the largest refugee host nations in the GLR.⁵² Judy Wakahiu shows that Kenya's refugee policies have evolved from being more permissive in the 1970s throughout the 1980s, to the more restrictive ones that are currently enforced.⁵³

Despite Kenya's long history of hosting of refugees, until recently, it had no strong policies relating to the control and management of refugees. John Burton and John Guiney show that, apart from signing and ratifying the various international conventions on refugees, Kenya did not have a uniform national refugee law governing refugees until 2006 when it adopted its Refugee Act.⁵⁴ Further, Burton and Guiney observe that it is from those international and regional treaties that seek to defend and uphold the rights, freedoms, dignity, and welfare of refugees that Kenya was able to craft its weak and fragmented laws that date back to 1963.⁵⁵ Drawing from the international legal frameworks and other fragmented legislations in Kenya, the next section traces the origins of Kenya's refugee policies prior to 2006 when it adopted the 2006 Refugee Act that remains in force. The analysis of the initial policies suggests that Kenya had more permissive policies prior to the 2006 policies, which are very restrictive.

Kenya developed its refugee laws and policies from the British colonial fragmented policies of the early 1960s. Everlyn Kiswii shows that, prior to 2006, Kenya managed its refugees through the Aliens Restriction Act of 1973.⁵⁶ The colonial government adopted those laws for purposes of controlling all foreigners, but Kenya used them to manage refugees. Lindley argues that, whereas Kenya had no national policy on refugees, it was

⁵² Goitom, "Refugee Law and Policy: Kenya."

⁵³ Judy Wakahiu, "Refugee Protection: The Challenges from Interventionist and Terrorism Concerns" (Kenya Human Rights Institute on the Somali Situation, Panafric Hotel, Kenya, February 26, 2007), accessed March 15, 2018, <http://www.rckkenya.org/downloads/docs/Refugee%20Protection%20-%20The%20challenges%20from%20Interventioni.pdf>.

⁵⁴ John Wagacha Burton and John Guiney, "The Plight of Urban Refugees in Nairobi, Kenya," *Refugee Rights: Ethics, Advocacy, and Africa* (2008): 92.

⁵⁵ Burton and Guiney, "The Plight of Urban Refugees in Nairobi, Kenya."

⁵⁶ Everlyn Martha Kiswii, "Refugee Influx and (In)security: Kenya's Experiences, 1991–2012," (master's thesis, University of Nairobi, 2013), 27, <http://chss.uonbi.ac.ke/sites/default/files/chss/REFUGEE%20INFLUX%20AND.pdf>.

able to host a significant number of *prima facie* refugees.⁵⁷ Whereas aliens had full protection from their countries of origin, however, refugees did not enjoy such a right, which implies that the Aliens Act of 1973 was inadequate to handle the matters of refugees. Because of the inconsistencies of the Aliens Act in handling refugees, Kenya devised other measures geared towards regulating the increasing number of refugees especially from Somalia, where both conflicts and drought were displacing people.⁵⁸ The absence of a uniform law on refugees led to the need for another law to specifically handle matters of refugees.

Consequently, in 1993, Kenya formulated the National Secretariat of Refugees (NSR) under the Home Affairs Department to harmonize humanitarian assistance for refugees.⁵⁹ Kiswii shows that the majority of these refugees were able to integrate within rural communities, but, as their number increased, some found their way to urban centers. As a result, in 1998, the Kenyan government formulated the Eligibility Committee to deal with the urban refugees.⁶⁰ The lack of a single legal framework and the fragmented policies created conflicts among government departments, however; Kiswii shows that,

there has always been a conflict between the Immigration and Home Affairs Department in relation to refugee issues in the 1970s and early 1990s. The Immigration Department argued that they were mandated by the Aliens Restriction Act of 1973 and the Immigration Act of 1967 to handle refugee issues.⁶¹

Furthermore, besides the absence of national laws to regulate refugees, their increased number created new challenges. During the early 1990s when Kenya received an influx of refugees from Somalia, Kenya was implementing its Structural Adjustment

⁵⁷ Anna Lindley, "Between a Protracted and a Crisis Situation: Policy Responses to Somali Refugees in Kenya," *Refugee Survey Quarterly* 30, no.4 (2011).

⁵⁸ Jennifer Hyndman and Bo Viktor Nylund, "UNHCR and the Status of Prima Facie Refugees in Kenya," *International Journal of Refugee Law* 10, no. 1–2 (January 1998): 21–48, <https://doi.org/10.1093/ijrl/10.1-2.21>.

⁵⁹ Kiswii, "Refugee Influx and (In)security: Kenya's Experiences, 1991–2012," 31.

⁶⁰ Kiswii, 31.

⁶¹ Kiswii, 31.

Program (SAP), which was one of the conditions of the World Bank (WB) for a country to receive funding.⁶² The SAP led to retrenchment that caused unemployment and inflation in Kenya's economy. Furthermore, Maina reports that Kenyan host communities who had no jobs viewed refugees not as people who needed assistance but as competitors for the limited jobs.⁶³ Additionally, Maina reports that, during the 1991–2006 period, the number of criminal activities involving guns increased, and refugees became the prime suspects.⁶⁴ Those negative perceptions about refugees seem to have influenced Kenyan policymakers to enact more restrictive refugee policies. The next section discusses the changes in Kenya's security dynamics that may have influenced the decisions of Kenyan authorities to adopt new refugee policies.

B. KENYA'S SECURITY DYNAMICS IN THE 2000s

Kenya did not formulate its refugee policies without strong reasons. James Milner shows that, in most African countries, the economic, political, historical, environmental, and security issues, which are not directly related to the existence of refugees, influence refugee policies.⁶⁵ Further, he asserts that the need to “justify restrictive asylum policies on the basis of perceived refugee-related insecurity” is one of several issues surrounding refugees policies in Kenya.⁶⁶ While this could be the case, not much literature exists showing refugees to be potential sources of terrorism. Seung-Whan Choi and Idean Salehyan, however, show that, after the 9/11 terrorist attacks on the United States, many countries started “framing” refugees as real and potential terrorists.⁶⁷ Related to that,

⁶² Andrew Maina, “Development of Refugee Law in Kenya: The African Angle.” World Policy, March 29, 2016, Accessed April 15, 2018. <https://worldpolicy.org/2016/03/29/development-of-refugee-law-in-kenya/>.

⁶³ Maina, “Development of Refugee Law in Kenya: The African Angle..”

⁶⁴ Maina.

⁶⁵ Milner, *Refugees, the State and the Politics of Asylum in Africa*, 161.

⁶⁶ Milner, 17.

⁶⁷ Seung-Whan Choi and Idean Salehyan, “No Good Deed Goes Unpunished: Refugees, Humanitarian Aid, and Terrorism,” *Conflict Management and Peace Science* 30, no. 1 (2013): 7, <https://doi.org/10.1177/0738894212456951>.

Donald Trump's Executive Order of March 6, 2017 seeks to "protect the nation from foreign terrorist entry into the United States."⁶⁸ The order originally denied people from six countries including Iran, Libya, Somalia, Sudan, Syria, and Yemen access to the United States. To that effect, this research suggests that whereas other factors are important in formulating refugee policies, framing refugees as a security threat is likely to have influenced Kenya's political decision to adopt new policies. This section traces the link between refugees and insecurity, especially regarding terrorism in Kenya. An appreciation of the link between refugees and terrorism is important in evaluating Kenya's response to the changes in security dynamics that led it to the adopt the new policies.

Regarding the issue of security, some scholars have argued that refugees spread conflicts and promote terrorism. In fact, Edward Mogire asserts that both al-Shabaab and the Kenyan authorities used refugees from Somalia to fuel the conflict in Somalia and Kenya.⁶⁹ He contends that the Kenyan government recruited Somali youths from refugee camps for the Federal Government in Somalia on the one hand, and al-Shabaab also recruited from the same camps that Kenya established near the Kenya-Somalia border.⁷⁰ Indeed, Jeremy Lind et al. show that "al-Shabaab recruited former fighters belonging to a 2,500-men strong militia of Kenyan Somalis and refugees that Kenya had mobilized and trained to fight in Somalia."⁷¹ This research, however, argues that refugees' presence, especially near the Kenya-Somalia borderline, only provided an opportunity for terrorists to spread the conflict from Somalia to Kenya; refugees are just victims who fled the same violence. Kenya's decision to establish the Dadaab camp in northeastern and the Kakuma

⁶⁸ Exec. Order No. 13769 (2017), accessed April 7, 2018, <https://www.whitehouse.gov/presidential-actions/executive-order-protecting-nation-foreign-terrorist-entry-united-states-2/>.

⁶⁹ Edward Mogire, *Victims as Security Threats: Refugee Impact on Host State Security in Africa* (England: Ashgate Publishing, Ltd., 2011), 39.

⁷⁰ Mogire, *Victims as Security Threats*, 39.

⁷¹ Jeremy Lind, Patrick Muhahi and Marjoke Oosterom, "'Killing a Mosquito with a Hammer': Al-Shabaab Violence and State Security Responses in Kenya," *Peacebuilding*, 5, no.2 (February 2017): 126, <https://doi.org/10.1080/21647259.2016.1277010>.

camp in northwestern Kenya, which are semi-arid, was a political decision to contain and segregate refugees from the majority of the population as seen in Figure 2.⁷²



Figure 2. Location of Dadaab and Kakuma Refugee Camps on the Periphery of Kenya.⁷³

As Figure 2 illustrates, the two camps are in remote areas, which suggests that the government may lack the capacity to control and supervise them, giving room for criminals to plan and coordinate their activities. If, in any case, there is evidence that terrorists are using the camps at the borders, it was the government's (not the refugees') decision to locate the camps near the borders.

⁷² Hyndman and Nylund, "UNHCR and the Status of Prima Facie Refugees in Kenya," 25.

⁷³ Adapted from "Map of Kenya," Google Maps, accessed April 10, 2018, <https://www.google.com/maps/@1.3722154,35.7669962,5.97z>.

Additionally, the greatest concern for the Kenyan authorities' perception about refugees relates to the flow of small arms and light weapons (SALW) across its borders.⁷⁴ Kenyan authorities blame refugees for the small arms trafficking that has led to more terrorist attacks on local communities, security personnel, and refugee aid workers. For example, on December 8, 2008, suspected al-Shabaab terrorists attacked an ambulance for German aid workers near the Dadaab refugee camp in Kenya.⁷⁵ There is no evidence, however, to suggest that refugees in Dadaab camp conducted the attacks or linked to their presence. Even more, similar incidents have happened in Nairobi where there are no refugee camps. For example, on September 21, 2013, terrorists suspected to be from al-Shabaab besieged Westgate Mall in Nairobi, where they killed more than 60 people and injured several others.⁷⁶ Further, Erin Miller reveals that between 1975 and 2012, most of the terrorist attacks have happened in major cities, where there are no refugee camps, with Nairobi registering the highest incidents (61 attacks) as opposed to Dadaab (11 attacks).⁷⁷ Although no firm conclusions can be drawn, the available evidence does not support the idea that refugees are responsible for these attacks.

George Kabongah observes that, apart from Kenya's porous borders, which facilitates trafficking, terrorists exploit the operational weaknesses of Kenya's security agencies and corruption to smuggle small arms into the country.⁷⁸ He further reveals that SALW in northern Kenya have fueled conflicts among pastoral communities, and in 2003, about 170,000 people were displaced.⁷⁹ The government's concerns about the proliferation

⁷⁴ Milner, *Refugees, the State and the Politics of Asylum in Africa*, 96.

⁷⁵ Choi and Salehyan, "No Good Deed Goes Unpunished: Refugees, Humanitarian Aid, and Terrorism," 67.

⁷⁶ Erin Miller, "Al-Shabaab Attack on Westgate Mall in Kenya," National Consortium for the Study of Terrorism and Responses to Terrorism (START), 1, September, 2013, accessed April 16, 2018, http://www.start.umd.edu/sites/default/files/publications/local_attachments/STARTBackgroundReport_alShabaabKenya_Sept2013.pdf.

⁷⁷ Miller, *Refugees, the State and the Politics of Asylum in Africa*, 2.

⁷⁸ George Kabongah, "Women, Conflict and Peacebuilding in Kenya," Maendeleo ya Wanawake Organisation, p. 24, accessed April 24, 2018, http://www.academia.edu/4349053/Women_Conflict_and_Peacebuilding_in_Kenya.

⁷⁹ Kabongah, "Women, Conflict and Peacebuilding in Kenya," 23.

of SALW is a serious security issue, but the flow of illegal SALW and the nature of insecurity they cause are not connected to the existence of refugees. For example, out of the 254 terrorist attacks from 1975 to 2012, Miller shows that the United Somali Congress, which one may claim belongs to Somalis, conducted only one attack as shown in Table 1.

Table 1. Perpetrators of Terrorist Attacks in Kenya from 1975 to 2012.⁸⁰

Perpetrators of Terrorist Attacks in Kenya, 1975-2012	Attacks	Fatalities	Wounded
Al-Qa`ida	3	240	4000
Al-Shabaab	93	121	492
Forum for the Restoration of Democracy-Kenya	2	1	0
God's Oppressed Army	2	0	0
Islamic Party of Kenya (IPK)	3	0	5
Kenya African National Union (KANU)	5	5	8
Kisii Activists	1	4	0
Maasai	1	3	4
Maskini Liberation Front	3	27	100
Merille Militia	3	6	4
Mombasa Republican Council (MRC)	3	4	5
Mungiki Sect	4	8	2
Mwakenya Dissident Movement	2	4	0
Nandi Tribe	4	0	32
National Development Party (NDP)	1	0	2
Oromo Liberation Front	2	143	1
Popular Front for the Liberation of Palestine (PFLP)	3	15	85
Sabaot Land Defense Force (SLDF)	4	19	11
Sabaot Tribe	2	40	0
Sungu Sungu	1	5	0
Toposa and Dongiro Tribes	2	89	0
United Somali Congress	1	1	2
Unknown/Other	109	320	278
Grand Total	254	1055	5031

Table 1 illustrates that Kenya has suffered a lot at the hands of terrorists since the early 1970s, for which Kenyan authorities perceive that the insecurity is related to the presence of refugees especially those from Somalia. Whereas al-Shabaab springs their attacks from Somalia, as Avery Burns reports,⁸¹ whether or not those attacks have affected public

⁸⁰ Source: Erin Miller, "Al-Shabaab Attack on Westgate Mall in Kenya," 3.

⁸¹ Avery Burns, "Feeling the Pinch: Kenya, Al-Shabaab, and East Africa's Refugee Crisis," *Refuge: Canada's Journal on Refugees* 27, no. 1 (2010), 11.

opinion is unclear but, for the most part, it is clear that most attacks were not attributable to groups linked to refugees.

Likewise, Kenyan authorities have also alleged a connection concerning the existence of refugees and increased violence within the refugee population. Some researchers like Kiswii and Zablon Mutongu have found data related to refugees especially in Dadaab camp in spreading violence. Kiswii reveals that “between January and June 1991, there were 32 banditry incidences reported, 114 incidences in 1992, and 193 incidences in 1993.”⁸² She attributes this increase in the incidences of banditry to the increased number of refugees in the area. Even more, Zablon Mutongu supports this argument, and he asserts that “one reason refugees have been associated with insecurity is because they are perceived to possess and propagate illicit firearms, undermining the legitimate authority of the state.”⁸³ Still, there is no evidence to suggest that the crimes were carried out by the refugees. In fact, Milner argues that while there is no evidence linking refugees with crime, the population may be swayed by politicians who stand to benefit from scapegoating refugees.⁸⁴ In any case, if there is a link between refugees and crime, there is a need to establish the extent to which the two are related, which Kiswii and Mutongu fail to explain.

With respect to the changing security dynamics and the negative perceptions that refugees are a source of insecurity, Kenya has responded by adopting new refugee policies. As I argue, Kenya’s negative attitude towards refugees, especially those from Somalia, as being connected to al-Shabaab terrorists, and its response to the new threats, have not improved the security situation. As Wakahiu shows, “Kenya’s refugee regime has changed drastically from tolerance in the 1970s and 1980s to hostility in 1990s and now refugees have come to be seen as a force of national and regional insecurity and instability.”⁸⁵ Lind

⁸² Kiswii, “Refugee Influx and (In)security: Kenya’s Experiences, 1991–2012,” 63.

⁸³ Zablon Mutongu Bundi, “The Plight of Refugees in Africa: A Perspective from Kenya.” *Theology* 120, no. 5 (September 2017): 329, <https://doi.org/10.1177/0040571X17710192>.

⁸⁴ Milner, *Refugees, the State and the Politics of Asylum in Africa*, 97–8.

⁸⁵ Wakahiu, “Refugee Protection: The Challenges from Interventionist and Terrorism Concerns.”

et al. show that Kenya adopted law, policies, and programs to enhance its security, which have lowered the quality of refugee protection.⁸⁶ The next section discusses policy changes resulting from changes in security.

C. KENYA’S REFUGEE POLICIES IN RESPONSE TO CHANGES IN SECURITY

The changing security situation in Kenya led it to adopt new refugee laws and policies. The new laws that replaced the Immigration Act of 1967 and the Aliens Restriction Act of 1973 sought to introduce new refugee policies. Thus, the new laws are the 2006 Kenya Refugee Act, which introduced the encampment policy, and the Security Laws (Amendment Act 2014) Act, which intended to scale down the number of refugees to 150,000 and reinforce the encampment policy.⁸⁷ This section explores the 2006 Kenya Refugee Act and the Security Laws (Amendment Act 2014) Act and focuses on the key issues that address security concerns surrounding refugees.

1. Kenya’s Refugee Act of 2006

Initially, Kenya’s policies were very accommodating to refugees, and in fact, refugees were integrated into local communities. Even more, there were no limits to refugee inflow until 2014, when Parliament amended the 2006 Refugee Act. Whereas Kenya had signed and ratified a number of international and regional treaties regarding refugees, Goitom shows that it (partially) accepted its obligations to protect refugees after enacting its Refugee Act of 2006.⁸⁸ The Refugees Act defines and classifies refugees as “statutory” and “*prima facie*.” In this case, “a statutory refugee” is one who,

owing to a well-founded fear of being persecuted for reasons of race, religion, sex, nationality, membership of a particular social group or political opinion is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself to the protection of that country; or

⁸⁶ Lind, Muhahi, and Oosterom, ““Killing a Mosquito with a Hammer,”” 119.

⁸⁷ Neil, “Kenya’s Hash New Security Laws Put Hundreds of Thousands of Refugees at Risk.”

⁸⁸ Goitom, “Refugee Law and Policy: Kenya.”

Not having a nationality and being outside the country of his former habitual residence, is unable or, owing to well-founded fear of being persecuted for any of the aforesaid reasons is unwilling, to return to it.⁸⁹

More importantly, Section 3(2) of the Act describes a “*prima facie*” refugee as “a person owing to external aggression, occupation, foreign domination of events seriously disturbing public order in any part or whole of his country of origin or nationality is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.”⁹⁰ From these definitions, which are adapted from the 1951 UN Convention, it is clear that Kenya intended to protect its refugees. The definition is also consistent with the provisions of the Kenyan Constitution Article 20(3), which provides for the protection of vulnerable people.

Similarly, there are other sections within the Kenya Refugee Act of 2006 that seek to protect refugees’ rights. Section 16(1) of the Act is exceptional because it provides for the rights and obligations of refugees, which implies that refugees could still enjoy their rights while in Kenya. Equally, Section 18 of the Refugees Act provides that,

No person shall be refused entry into Kenya, expelled, extracted from Kenya or returned to any other country or subjected to any similar measure if, as a result of such refusal, expulsion, return or other measure, such a person is compelled to return to remain in a country where—

(a) the person may be subject to persecution on account of race, religion, nationality, membership of a particular social group or political opinion; or

(b) the person’s life, physical integrity or liberty would be threatened on account of external aggression, occupation, foreign domination or events seriously disturbing public order in part or the whole of that country.⁹¹

As a matter of fact, the Act prohibits *refoulement* that is contained in Article 3 of the 1984 UN Convention. This clearly shows that the Kenyan Refugee Act provides for the safety and administration of refugees in accordance with international frameworks.

⁸⁹ Republic of Kenya. “Refugees Act No.13 of 2006.” Accessed April 1, 2018. http://www.kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/RefugeeAct_No13of2006.pdf.

⁹⁰ Republic of Kenya, “Refugee Act.”

⁹¹ Republic of Kenya.

In contrast to these provisions, Kenya has on several instances violated not only the international conventions it ratified but also the Act that it adopted. For example, in 2007, Kenyan authorities decided to close the Kenya-Somalia border due to al-Shabaab threats.⁹² This was an act that violated the rights of refugees, but Kenya nonetheless took that decision citing security threats. Further, the Act contains various provisions that introduce new policies like encampment and grounds for repatriation as some of its security measures responding to the new security threats that Kenyans perceive are due to the presence of refugees.

In addition to violating several provisions of Kenyan laws, the same Act comprises several sections that breach the very legal framework it established and other international legislations that Kenya ratified. This section finds numerous grounds where some of the sections within the Act contradict other laws in order to address security issues. For example, Sections 19 and 20 of the Act contradict the 1984 UN and Section 18 of the Kenya Refugee Act that prohibit forceful repatriation. Section 19 of the Act states that “the Commissioner (for Refugees Affairs) [sic] may withdraw the refugee status of any person where there are reasonable grounds for regarding that person as a danger to national security or to any community of that country.”⁹³ For example, the return of over 400 asylum seekers from Somalia on January 4, 2007 is one of the cases to suggest that Kenya has been violating several provisions of the Refugee Act, especially that of *non-refoulement*.⁹⁴ This seems to suggest that the new refugee policies were intended to address the changes in security dynamics, which Kenyan authorities attribute to refugees.

Although the Act contains some restrictions regarding the freedoms of refugees, it was not so harsh until Parliament amended it to respond to serious security challenges. Consequently, in 2014 it was amended through the Security Laws (Amendment) Act of 2014 to further address security challenges, which Kenyan authorities perceived to be related to refugees. The next subsection analyzes the Security Laws (Amendment) Act

⁹² Maina, “Department of Refugee Law in Kenya.”

⁹³ Republic of Kenya, “Refugee Act.”

⁹⁴ Wakahiu, “Refugee Protection: The Challenges from Interventionist and Terrorism Concerns.”

2014 in order to ascertain how changes in the security situation formulated the basis for which Kenyan authorities managed to amend key provisions of the Refugees Act for purposes of security.

2. The Security Laws (Amendment) Act, 2014

Prior to this Security Amendment Act, Kenya regulated its refugees using the 2006 Refugees Act. Due to state suspicion of security challenges surrounding refugees, the 2006 Refugees Act was amended through the Security Laws (Amendment) Act of 2014. The Act intended to achieve two things; one was to operationalize the encampment policy that confined refugees in camps, and the other was to limit the number of refugees Kenya could host.⁹⁵ Whereas the 2006 Refugee Act has provisions that restrict refugees to camps, Kenyan authorities had never enforced it until terrorist attacks became rampant. For example, the terrorist attack of the Westgate Mall in Nairobi on September 21, 2013 was a catalyst in amending the 2006 Refugee Act in order to restrict refugees in camps.⁹⁶ More specifically, Section 16(2) of the Act states that,

the Minister [Minister responsible for refugees] may, by notice in the *Gazette*, in consultation with the host community, designate places and areas in Kenya to be;

(a) transit centers for the purposes of temporarily accommodating persons who have applied for recognition as refugees or members of the refugees' families while their applications for refugee status are being processed; or

(b) refugee camps.⁹⁷

Prior to the Act coming into force, though the majority of refugees stayed in camps, other refugees were free to stay in other places, especially in urban areas. Therefore, the Security Laws (Amendment) Act of 2014 aimed at reinforcing the encampment policy and limiting the number of refugees in the country.⁹⁸ Thereafter, in 2014, the Kenyan

⁹⁵ Goitom, "Refugee Law and Policy: Kenya."

⁹⁶ Miller, "Al-Shabaab Attack on Westgate Mall in Kenya," 1.

⁹⁷ Republic of Kenya, "Refugee Act."

⁹⁸ Goitom, "Refugee Law and Policy: Kenya."

Parliament amended the Kenyan Refugee Act of 2006, entrenching Sections 11, 12, 14, and 16 to enforce the encampment policy. More importantly, the new legislation scrapped the 30 days from Section 11(1) that were required for a refugee to register, a clause was added to Section 12 to stop applicants (refugees) from moving out of the camp, and it expanded Section 14 to include clause (c), which requires refugees to seek the permission of the Refugee Camp Officer before leaving their camp.⁹⁹ Based on these amendments, Kenya's new laws and policies intended to confine refugees to camps, repatriate some, reject new refugees, and limit the number it could host. Whereas Kenya's main reason was to address the new security issues related to refugees, the new policies have not addressed the security threats. The next section discusses the effects of those policy changes on Kenya's security and refugees.

D. EFFECTS OF POLICY CHANGES ON KENYA'S SECURITY

Kenyan authorities' securitization of refugee issues, which stem from a belief that refugees pose serious security threats, has resulted in shifting their attention from the real causes of insecurity in the country to targeting refugees who are also victims of violence. Consequently, Kenya has enforced its encampment policy, repatriated its refugees, closed its borders to prevent the inflow of new refugees, and suspended its registration services for refugees.

The implementation of the new policies has not addressed Kenya's security challenges. Further, the new laws and policies may have reduced the quality of refugee protection contrary to international and regional refugee protection regimes. Admittedly, the encampment policy only limited the freedom of movement of refugees but has not stopped terrorist attacks; repatriation has not reduced the number of refugees but new ones have emerged, and some whom the government forcefully repatriated to Somalia found

⁹⁹ Security Laws (Amendment) Act of 2014, No. 19 of 2014, accessed April 22, 2018, http://kenyalaw.org/kl/fileadmin/pdfdownloads/AmendmentActs/2014/SecurityLaws_Amendment_Act_2014.pdf.

their way back to Kenya.¹⁰⁰ Likewise, closing the Kenya-Somalia border has not reduced the number of refugees in the country due to renewed insecurity in Somalia,¹⁰¹ but has instead encouraged more illegal entries and the smuggling of illegal weapons. The illegal entry across the porous Kenya-Somalia border has offered opportunities to al-Shabaab to recruit, while the entry of illegal guns has increased terrorist attacks. This section discusses the effect of the new policies on Kenya's security.

Following the operationalization of the 2006 Refugee Act in 2007 and the Security Laws (Amendment) Act of 2014, Kenya implemented a number of policies and programs that aimed to improve its security. It appears that most of the policies targeted refugees, especially those from Somalia, because of the perception that Somali refugees are linked to al-Shabaab terrorists. One of the first policies Kenya implemented to address the security issues related to refugees was the encampment policy. Section 16(2)(b) of the Kenyan Refugee Act, which provides for the encampment policy, requires all refugees to stay in either of the designated refugee camps of Dadaab or Kakuma in the northeast and northwest of the country.¹⁰² According to the Security Laws (Amendment) Act of 2014, the encampment policy restricts refugees from leaving the camps, including those who had established themselves in urban centers.¹⁰³ Apart from being a violation of refugee rights, the encampment policy negatively impacted Kenyan security. In the first instance, the confinement of Somali refugees in Dadaab camp, with no freedom to work, facilitated the easy radicalization of youths, which formed a fertile ground for recruitment into al-Shabaab's ranks. For example, Jeremy Lind et al. show that "al-Shabaab recruited former fighters of Kenyan Somalis and refugees that Kenya mobilized and trained to fight in

¹⁰⁰ Human Rights Watch, Kenya: Involuntary Refugee Returns to Somalia," September 14, 2016, accessed February 13, 2018, <https://www.hrw.org/news/2016/09/14/kenya-involuntary-refugee-returns-somalia>.

¹⁰¹ Anna Lindley, "Between a Protracted and a Crisis Situation: Policy Responses to Somali Refugees in Kenya," *Refugee Survey Quarterly* 30, no.4 (2011): 9.

¹⁰² Republic of Kenya, "Refugee Act."

¹⁰³ Security Laws (Amendment) Act, No. 19 of 2014.

Somalia.”¹⁰⁴ They further argue that because of this kind of radicalization, Kenyans of Somali origin have conducted most of the terrorist attacks in Kenya.¹⁰⁵ In fact, Brendon J. Cannon et al. show that “Kenya has produced the largest percentage of *muhajiriin* and terrorist operatives—25% of the estimated 7,000—within the ranks of al-Shabaab.”¹⁰⁶ For that reason, the encampment policy did not achieve the intended objective of improving Kenya’s security but instead exacerbated it because, as Lind et al., show, it facilitated radicalization and aided the recruitment of more terrorists of Kenyan origin.

In addition to the encampment policy, Kenya implemented the repatriation policy in order to decrease its number of refugees. Goitom argues that “recent terrorist attacks are said to have prompted Kenya to introduce changes to its refugee policy.”¹⁰⁷ Consequently, Kenya seems to have embarked on the repatriation program after a series of terrorist attacks in urban centers, though this was inconsistent with Article 3 of the 1984 UN Convention and Section 18 of the Kenya Refugee Act of 2006, which prohibit *refoulement*. Actually, the Human Rights Watch (HRW) report suggest that Kenya forcefully repatriated some of its refugees.¹⁰⁸

In fact, Lind et al. and Edward Mogire provide evidence to show that on several occasions, Kenyan authorities forcefully repatriated refugees, contrary to the principle of *non-refoulment*. Lind et al. show that during Operation Usalama Watch (Operation Peace Watch) in April 2014, Kenyan authorities forcefully repatriated Somali refugees to Mogadishu including the 82 who had registered with the UNHCR.¹⁰⁹ Above all, Mogire reports that,

¹⁰⁴ Lind, Muhahi, and Oosterom, ““Killing a Mosquito with a Hammer,”” 126.

¹⁰⁵ Lind, Muhahi, and Oosterom, 127.

¹⁰⁶ Brendon J. Cannon and Dominic Ruto Pkalya, “Why al-Shabaab Attacks Kenya: Questioning the Narrative Paradigm,” *Terrorism and Political Violence* (March 2017): 8, <https://doi.org/10.1080/09546553.2017.120607>.

¹⁰⁷ Goitom, “Refugee Law and Policy: Kenya.”

¹⁰⁸ Human Rights Watch, “Kenya: Involuntary Refugee Returns to Somalia.”

¹⁰⁹ Lind, Muhahi, and Oosterom, ““Killing a Mosquito with a Hammer,”” 130.

in early 2000, the government expelled 400 refugees to Somalia following the border closure, in 2001, it forcefully repatriated 6,000 to 10,000 Somali refugees back to their country from the border town of Mandera, in January 2007, it expelled 40 people believed to be Olomo Liberation Front (OLF), and in 2007 it deported at least 85 asylum seekers back to Somalia after designating them as terrorists with links to the al-Qaida.¹¹⁰

The repatriation program did not reduce the number of refugees in Kenya, however, but instead new ones arrived especially in 2011 because of the renewed political violence in Somalia, as Figure 3 illustrates.

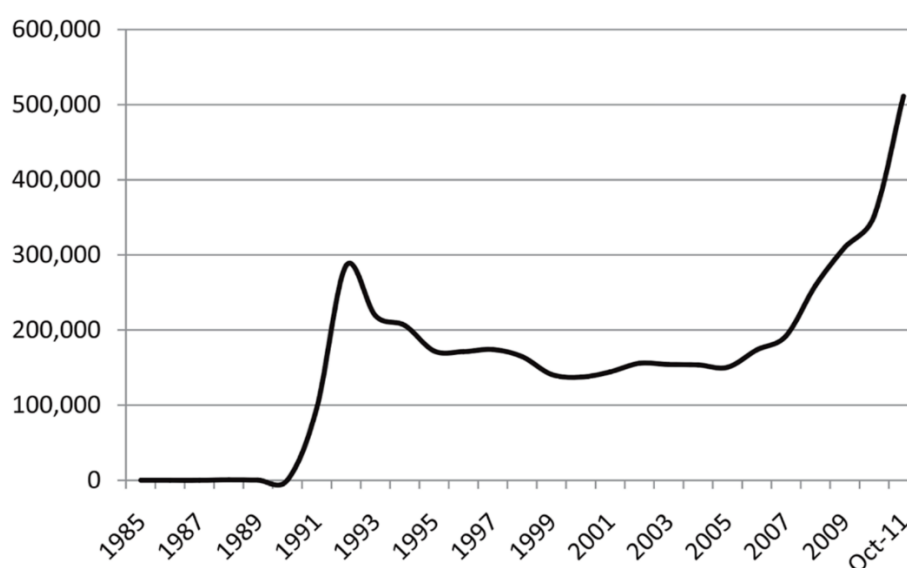


Figure 3. 1985–2011 Somali Refugees in Kenya.¹¹¹

As Figure 3 demonstrates, Anna Lindley reports that in 2011, the number of Somali refugees almost tripled that of 2006, and during the seven months of 2011, about 142,000 refugees arrived in Kenya.¹¹²

¹¹⁰ Edward Mogire, “Refugee Realities: Refugee Rights Versus State Security in Kenya and Tanzania,” *Transformation* 26, no. 1 (January 2009): 22, <https://doi.org/10.1177/0265378809102173>.

¹¹¹ Source: Lindley, “Between a Protracted and a Crisis Situation: Policy Responses to Somali Refugees in Kenya,” 9.

¹¹² Lindley, “Between a Protracted and a Crisis Situation,” 9.

Furthermore, the forceful repatriation of Somali refugees did not improve the security situation as Kenyan authorities believed. Instead, it provided al-Shabaab with an opportunity to recruit those who were stuck in Somalia's internally displaced peoples' camps (IDPC). In fact, the HRW report shows that 10% of the repatriated refugees ended up in IDPCs in Somalia while others fled back to Kenya.¹¹³ Accordingly, al-Shabaab rejuvenated its numbers of Kenyan fighters, which by 2012 had dropped to 500.¹¹⁴ Krista Mahr's report seems to suggest that terrorist attacks in Kenya increased in response to Kenya's decision to forcefully repatriate Somali refugees. For example, in 2015, al-Shabaab claimed responsibility for conducting the deadly attack on April 2, 2015 at Garissa University, which claimed at least 150 lives.¹¹⁵ This suggests that the new policies could not address the insecurity because they targeted the refugees who are not the source of the problem since they are also victims of the same violence.

Similarly, Kenyan authorities intended to use the new laws to reduce the number of refugees by closing some of their camps. The Security Laws (Amendment) Act of 2014 requires that the number of refugees in Kenya should not exceed 150,000.¹¹⁶ The Kenyan authorities intended to achieve this by closing some of the refugee camps, but their first target was the Dadaab Camp, where the majority of the occupants are Somali refugees. In fact, the HRW report of September 14, 2016 shows that, by November 2016, the Kenyan government intended to shut down Dadaab refugee camp.¹¹⁷ The UNHCR estimates that in 2016, Somali refugees in Kenya constituted over 80% of the total refugee population in the country.¹¹⁸ In other words, it was easier to achieve the required number of refugees if

¹¹³ Human Rights Watch, "Kenya: Involuntary Refugee Returns to Somalia."

¹¹⁴ Lind, Muhahi, and Oosterom, "'Killing a Mosquito with a Hammer,'" 127.

¹¹⁵ Krista Mahr, "Kenya Has Hosted Hundreds of Thousands of Refugees in the Past Two Decades. Now, It Wants Them Out," *Newsweek*, July 18, 2016, accessed March 1, 2018, <http://www.newsweek.com/2016/07/22/dadaab-closure-host-somalia-refugees-now-kenya-wants-them-out-481379.html>.

¹¹⁶ Kenya Security Laws (Amendment) Act No. 19 of 2014.

¹¹⁷ Human Rights Watch, "Kenya: Involuntary Refugee Returns to Somalia."

¹¹⁸ United Nations High Commissioner for Refugees (UNHCR), "Kenya Comprehensive Refugee Programme 2016: Programming for Solutions," 2016.

they had targeted the Somali refugees. Targeting Somali refugees because of the perceptions that they are a security burden seems to be a serious way of marginalizing certain communities.

Consequently, targeting to close the Dadaab refugee camp, which houses mostly Somali refugees, worsened the security situation. Indeed, Lind et al. seem to suggest that al-Shabaab exploited the “persistent marginalization, unequal citizenship and the use of state violence against minority populations”¹¹⁹ to carry out more terrorist attacks. Whether Somali refugees were involved in terrorist activities or not, Lind et al. show that “the highest number of fatalities by al-Shabaab, (which rose to 59% in 2015) [sic], demonstrated the effectiveness of the organization’s strategy to exploit internal tensions in Kenya to promote the spread of violence.”¹²⁰ Therefore, this narrative suggests that the implementation of the new refugee policies did not achieve Kenya’s desired objective of reducing the number of refugees in the country as well as terrorist attacks. As I discuss in more detail, however, the policy may have helped politicians to achieve other political or financial objectives.

Accordingly, following the implementation of the 2006 Refugee Act, Kenya opted to close the Kenya-Somalia border and immediately suspended the registration of new refugees. Lind et al. argue that Kenya’s pronouncement to close its border with Somalia was out of its fear that the defeated Islamic Courts Union (ICU) would cross the border into Kenya to cause more insecurity in the country.¹²¹ Besides, in 2012, Kenya closed its border with Somalia for the second time when it launched its “Operation Linda Inchi” into Somalia against al-Shabaab terrorists and also suspended the registration of refugees, basing their decision on security issues. This, however, neither stopped refugees from entering Kenya nor improved the security situation but rather worsened it.

¹¹⁹ Lind, Muhahi, and Oosterom, ““Killing a Mosquito with a Hammer,”” 122.

¹²⁰ Lind, Muhahi, and Oosterom, 126.

¹²¹ Lind, Muhahi, and Oosterom, 121.

The closure of the border did not stop refugees from entering Kenya because of the porousness of its border with Somalia. More significantly, criminals took advantage to smuggle SALW, which criminals used to commit further atrocities in Kenya. Rachel Stohl et al. and Lind et al. illustrate how the proliferation of SALW impacted the security of the country. Lind et al. provide evidence of increased atrocities as a result of the increased proliferation and misuse of SALW. They claim that “far from curbing al-Shabaab violence, attacks have multiplied, ranging from the September 2013 siege of Nairobi’s Westgate shopping center, to village massacres, to the targeted killings of police and religious figures, to the Garissa University College attack in April 2015—Kenya’s deadliest since the 1998 al-Qaeda bombing of the U.S. Embassy in Nairobi.”¹²²

This section has analyzed the effects of the new policy changes on the security of Kenya. It has demonstrated that whereas the country’s refugee policies intended to address security issues, they instead worsened the situation. It suggests that the underlying cause of the failure of the new policies is based on the securitization of refugees, thinking that they are the source of insecurity, yet they are also victims of insecurity. By securitizing refugees, Kenya shifted its attention from the underlying causes of terrorism and focused its attention on refugees. It is therefore significant to establish why the perception of refugees as a source of insecurity drives the restrictive refugee policies in Kenya. The next section analyzes those negative perceptions against refugees to establish the extent to which refugees cause insecurity and also identify why Kenyan authorities perceive refugees as a threat.

E. FACTORS THAT DRIVE KENYA’S REFUGEE POLICIES

Human rights organizations have criticized Kenya for abandoning its permissive refugee policies and adopting more restrictive ones. Kenyan politicians have always justified their decision for the restrictive refugee policies that they are necessary to address the challenges associated with refugee hosting, however. Indeed, Milner summarizes Kenya’s political justification for the restrictive approach as “the sheer magnitude of the

¹²² Lind, Muhahi, and Oosterom, ““Killing a Mosquito with a Hammer,”” 119.

refugee influx in the 1990s that overwhelmed the state capacity, lack of burden sharing that has placed strain on the environment and public services, and the rise of crime and insecurity both in refugee-populated areas and urban centers.”¹²³ This research argues that, while refugees present serious challenges that require governments to adopt policies for their management, Kenya’s historical relationship with Somalis and the political exploitation of refugees as a security threat are key factors driving the restrictive nature of Kenya’s refugee policies.

This section discusses Kenya’s negative historical ties with Somalis and shows how politicians have exaggerated the minor conflicts among Kenyan refugee host communities in order to justify the restrictive policies, which contravene first the international refugee protection regime and second the 2010 Kenyan constitution. It further observes that even the link between refugees and insecurity is because of the negative public perceptions, which are promoted by politicians for their personal benefit.¹²⁴ Despite that warning, Kenya’s refugee camps (Dadaab and Kakuma) are still open, making the political rhetoric link even more explicit.

1. Historical Relationships Between Kenyans and Somalis

Historically, dividing Somalis in five different areas and their desire to secede from Kenya seem to be the source of the political troubles that the Kenyan state has had with Somalis, which influence the adoption of restrictive refugee policies. Milner observes that Kenya’s political and security concerns about Somalis are “driven by fears of irredentism and threats to the territorial integrity of modern Kenya.”¹²⁵ Further, as Figure 4 illustrates, Milner reports that “the Somali people were divided into five parts at the Berlin Conference of 1884: French Somalia (now Djibouti), British Somaliland, Italian Somaliland, Ogaden

¹²³ Milner, *Refugees, the State and the Politics of Asylum in Africa*, 90.

¹²⁴ Milner, 98.

¹²⁵ Milner, 101.

(now part of Ethiopia), and the Northern Frontier District (NFD) of the British East Africa (now the North Eastern Province of Kenya).”¹²⁶



Figure 4. Territory Inhabited by the Somalis in Different Countries.¹²⁷

Additionally, Somalis desire to be part of Somalia republic started before Kenya attained its independence. As part of a wider campaign to unite all Somalis under one country, the Somalis who lived in the NFD in Kenya started agitating for secession from the British colony of Kenya. Edmond Turton reports that, by 1961, “the Northern Province Peoples Progressive Party (NPPPP)...campaigned for Somali secession and it gained very widespread support.”¹²⁸ The desire to secede from Kenya was later supported by the state

¹²⁶ Milner, *Refugees, the State and the Politics of Asylum in Africa*, 101.

¹²⁷ Source: Mũturi wa Njeri, “Kenya That Was Never Kenyan: The Shifta War & The North Eastern Kenya,” Medium, accessed May 1, 2018, <https://medium.com/@muturi/kenya-that-was-never-kenyan-the-shifta-war-the-north-eastern-kenya-e7fc3dd31865>.

¹²⁸ Edmond Turton Romilly, “Somali Resistance to Colonial Rule and the Development of Somali Political Activity in Kenya 1893–1960,” *The Journal of African History* 13, no. 1 (January 1972): 139, <https://doi.org/10.1017/S0021853700000293>.

in the independent Somalia. Somalia's constitution recognized all Somalis as its citizens and this is displayed in the Somali national flag, with its five-pointed white star, as Figure 5 illustrates.



Figure 5. Somalia National Flag.¹²⁹

The five points of the white star illustrate the various places where the colonial borders placed them. Somalis living in different countries not only wanted to be recognized as Somalis, but they also desired that the territories they occupy be ruled and governed by the state of Somalia. The British frustrated the Kenyan Somali's desire to unite, however. David Kromm reports that the commission that was established to find out whether Kenyan Somalis would want to remain under the newly independent Kenya or belong to the Somali republic found that the majority of Somalis wanted secession and unity with the Somali republic.¹³⁰ He further reports that the denial was followed by rebellions like the *shifto* rebellion of 1963–67 in Kenya and wars like the Ogaden war of 1977 in Ethiopia, which were sponsored by the state in Somalia.

¹²⁹ Flagmakers, "Flag of Somalia—A Brief History," accessed May 10, 2018, <https://www.flagmakers.co.uk/wp-content/uploads/Flag-of-Somalia-A-Brief-History-Download.pdf>.

¹³⁰ David Kromm E, "Irredentism in Africa: The Somali-Kenya Boundary Dispute," *Transactions of the Kansas Academy of Science (1903–)* 70, no. 3 (Autumn 1967): 362, DOI: 10.2307/3627482.

Furthermore, Njeri argues that “despite the heavy costs of the war [*shifta* war], the nationalistic Kenyan government...could not bear the loss of almost a third of Kenyan territory.”¹³¹ Although Kenya defeated the *shifta* rebellion in 1967 and retained the North Eastern Province (NEP), it continued marginalizing the Somalis and suspecting them of causing insecurity. That situation worsened after Somali refugees from Somalia sought asylum in Kenya. While those refugees posed no security threat, Njeri asserts that “their mere presence has been used by ill-intentioned extremists to infiltrate the Kenyan society and cause damage.”¹³² Rono Jona asserts that the continued hosting of large number of refugees, especially from Somalia, generated concerns about their possible cause of insecurity in Kenya.¹³³ Since then, the Kenyan state and the general population perceive Somalis as a security threat.

Consequently, on January 4, 2007, Kenyan authorities denied entry to Somali asylum seekers, claiming that they could be members of the defeated ICU in Somalia.¹³⁴ Further, in the January 6, 2007 opinion poll, 94% of interviewed Kenyans supported the country’s decision to turn away Somali refugees for security reasons and also argued that Kenya has hosted refugees for too long.¹³⁵ Likely because of that history of secession attempts, Kenyans treat refugees, especially those from Somalia, with a lot of suspicion, hence justifying the reasons for adopting policies that contain them in camps.

2. The Importance of Political Rhetoric

There are other factors that are responsible for this negative perception about refugees, and which are exaggerated by Kenyan politicians for their personal benefit. Those factors include conflicts between refugees and the host communities, trafficking of SALW, terrorism, numbers, and burden sharing. There is no doubt that Kenya received

¹³¹ Njeri, “Kenya That was Never Kenyan: The Shifta War & The North Eastern Kenya.”

¹³² Njeri, “Kenya That was Never Kenyan: The *Shifta* War & The North Eastern Kenya.”

¹³³ Rono Jona, “Kenya Foreign Policy,” in *Africa Foreign Policies*, ed. Stephen Wright (Boulder, CO: Westview, 1999), 10.

¹³⁴ Wakahiu, “Refugee Protection: The Challenges from Interventionist and Terrorism Concerns.”

¹³⁵ Wakahiu.

unprecedented number of refugees from 1991 to 1993 following the collapse of the state in Somalia. Also, Kenya registered a problem of burden sharing and the international community reduced funding to cater to other emergencies.¹³⁶ Those grounds are not enough to justify its restrictive policies but are used by politicians to construct persuasive political campaigns. For example, President Uhuru Kenyatta's government announcement to close the Dadaab camp came a week after he started campaigning for the 2017 presidential elections. Kenya's government announcement that "under the circumstances, the government or the Republic of Kenya, having taken into consideration its national security interests, has decided that the hosting of refugees has come to an end."¹³⁷ Despite that warning, Kenya's refugee camps (Dadaab and Kakuma) are still open, making the political rhetoric link even more explicit.

Kenyan politicians blame refugees for increasing conflicts with their host communities over resources. Jennifer Hyndman and Bo Viktor Nylund show that Kenya established both the Dadaab and Kakuma refugee camps in semi-arid areas where resources like water, pasture, and firewood are very scarce.¹³⁸ Further, Jeff Crisp shows that scarce resources have been the source of grievances between refugees and the local communities.¹³⁹ Milner, however, reports that these grievances notwithstanding, "one consequence has been an increase in grievances felt by the local population towards refugees, exacerbated by local politicians who, for electoral gain perpetuate a view that refugees receive a privileged treatment over the local population."¹⁴⁰ Jeff Crisp observes that the claims that refugees are a source of conflicts may not be valid because the UNHCR designed and implemented programs in all the refugee camps in order to curtail such

¹³⁶ Milner, *Refugees, the State and the Politics of Asylum in Africa*, 91–6.

¹³⁷ Simon Allison, "Dadaab Closure: How 600,000 Refugee Got Caught Up in Kenya's Electioneering," *Guardian*, May 11, 2016, accessed June 1, 2018, <https://www.theguardian.com/world/2016/may/11/kenya-dadaab-closure-refugees-caught-up-in-cynical-electioneering>.

¹³⁸ Hyndman and Nylund, "UNHCR and the Status of Prima Facie Refugees in Kenya," 24.

¹³⁹ Jeff Crisp, "A State of Insecurity: The Political Economy of Violence in Refugee-Populated Areas of Kenya," *New Issues in Refugee Research*, Working Paper No.16, Geneva: UNHCR (December 1999): 12, <http://www.unhcr.org/3ae6a0c44.pdf>.

¹⁴⁰ Milner, *Refugees, the State and the Politics of Asylum in Africa*, 98.

conflicts, though they could not eliminate the problem because of political interests.¹⁴¹ Indeed, the UNHCR and other international NGOs have tried to mitigate conflict by designing programs that aim to protect, assist, manage, and educate both refugees and the host communities.

Certainly, Crisp shows that some of the UNHCR programs such as reinforcing and empowering the police through establishing radio networks, and giving allowances to police officers, have mitigated conflicts between refugees and the host communities.¹⁴² In addition, the UNHCR has trained security officers in matters of human rights and also facilitated mobile courts in order to dispense justice. In fact, Milner shows that when the UNHCR initiated new security programs in Dadaab camp, “crime fell from 300 in 1998 to 36 in 2003,”¹⁴³ as Figure 6 illustrates.

¹⁴¹ Jeff Crisp, “A State of Insecurity: The Political Economy of Violence in Kenya’s Refugee Camps,” *African Affairs*, 99, no. 397 (October 2000): 601, <https://doi.org/10.1093/afraf/99.397.601>.

¹⁴² Crisp, “A State of Insecurity: The Political Economy of Violence in Kenya’s Refugee Camps,” 613–15.

¹⁴³ Milner, *Refugees, the State and the Politics of Asylum in Africa*, 99.

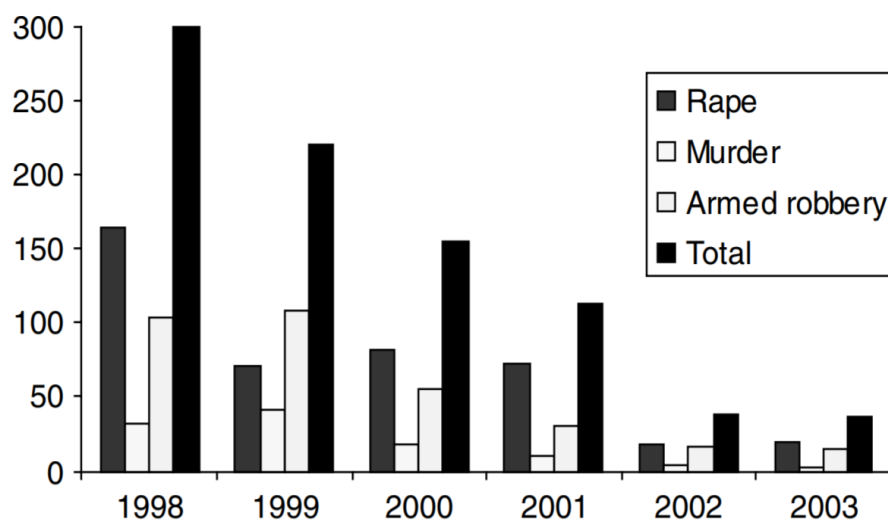


Figure 6. Crime Rate in Dadaab Camp from 1998 to 2003.¹⁴⁴

From the statistics in Figure 6, it is evident that the level of crime, which is not solely linked to refugees, decreased significantly. In fact, Milner shows that the security of Dadaab has improved from before the establishment of the camp in the early 1990s.¹⁴⁵ It is therefore illogical for Kenyan authorities to continue blaming refugees for increasing crime in host communities. Milner reports that whereas such violent crimes were registered, refugees did not instigate them, but Kenyan politicians did.¹⁴⁶ Lack of evidence to link refugees with crime seem to suggests that politicians exaggerate the minor conflicts among Kenyan refugee host communities in order to justify the restrictive policies that confine refugees in camps.

In addition to the conflicts between refugees and the host communities, Kenyan authorities believe that refugees threaten the country's security. Kenyan authorities blame refugees for the trafficking of SALW and link them to terrorism. For example, on May 6, 2016, Kenyan authorities threatened to close refugee camps, stating that hosting refugees

¹⁴⁴ Source: Milner, *Refugees, the State and the Politics of Asylum in Africa*, 99.

¹⁴⁵ Milner, 99.

¹⁴⁶ Milner, 98.

has resulted into security, economic, and environmental challenges.¹⁴⁷ The *Daily Nation* quotes the Principal Secretary for the Interior, Dr Eng. Kerenji Kibicho, as saying,

Some of the largest terrorist attacks, such as the 2013 Westgate atrocity, have been planned and operationalized from Dadaab. Al-Shabaab has been able to take advantage of the camps' overcrowded and under-resourced conditions, and most importantly, the limits to policing United Nations-run sites, to operate with an alarming degree of freedom. The Kenyan Government's most pressing constitutional and moral responsibility is to ensure the security of its citizens. Our intelligence and security forces have known for a long time that these camps are a dire threat to our people's security.¹⁴⁸

Leslie Lefkow reports, however, that "despite frequent accusations, Kenyan government officials have not produced any tangible evidence that refugees are responsible for the attacks. Even more, most of the individuals implicated in or prosecuted for attacks have been Kenyans."¹⁴⁹ The absence of evidence that refugees deal in SALW, or are connected to terrorism, suggests that whereas Kenya has suffered a lot at the hands of terrorists, for Kenyan authorities to label all refugees as terrorists is to justify their restrictive policies.

Furthermore, Kenyan politicians have manipulated the issue of numbers and burden sharing in order to justify their actions. First, Kenya received a significant number of refugees during the period 1991–3, when the Siad Barre regime in Somalia collapsed. The UNHCR statistics for 1992 shows that Kenya hosted 401,900 refugees,¹⁵⁰ which seems to have impacted its economy. This research finds evidence that the numbers could not be used after 1995 to justify Kenya's actions, however. Milner uses the UNHCR statistics

¹⁴⁷ Leslie Lefkow, "Refugee Camp Closure Punishes Innocent People for Complicated Crisis," *Daily Nation*, accessed May 12, 2016, <https://www.nation.co.ke/oped/opinion/Blaming-refugees-for-everything-is-becoming-a-trend/440808-3199858-format-xhtml-15gjio4/index.html>.

¹⁴⁸ Karanja Kibicho, "Our First Duty is to Protect Kenyans," *Daily Nation*, accessed May 11, 2016, <https://www.nation.co.ke/oped/opinion/-Our-first-duty-is-to-protect-Kenyans/440808-3198152-format-xhtml-j9bfg6z/index.html>.

¹⁴⁹ Lefkow, "Refugee Camp Closure Punishes Innocent People for Complicated Crisis."

¹⁵⁰ UNHCR, "Annex I: The Problems with Refugee Statistics," 5, accessed April 29, 2018, <http://www.unhcr.org/3eedc1e2.pdf>.

from 1991 to 1992 and reports that whereas the number of refugees in Kenya was more than 400,000, it had decreased to 250,000 refugees by 1995,¹⁵¹ as Figure 7 illustrates.

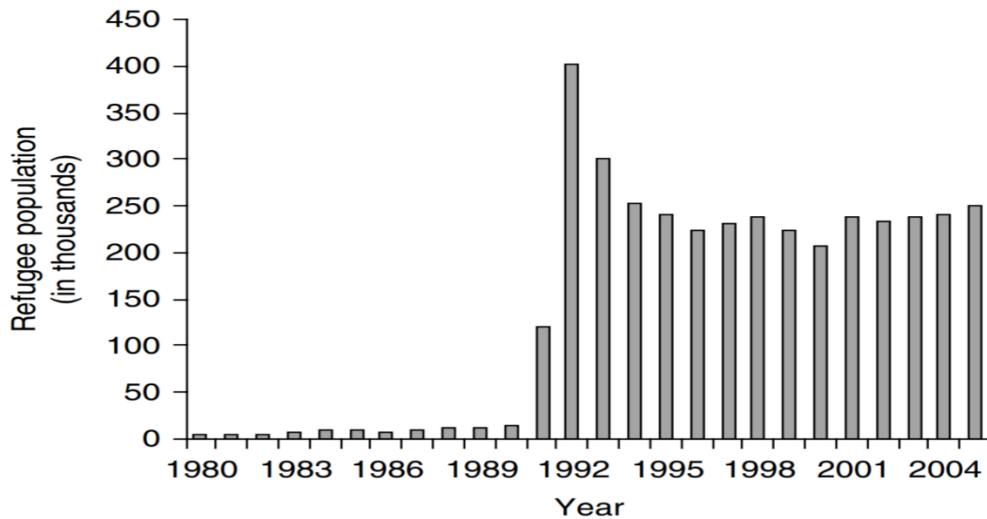


Figure 7. 1980–2005 Refugees in Kenya.¹⁵²

From the data in Figure 7, it is evident that the issue is not the number of refugees in the country but Kenyan authorities use several excuses to depict refugees as a serious burden. For example, the UNHCR reports that “serious statistical problems arise particularly when the presence of refugees is a matter of political controversy.”¹⁵³ Further, Milner reports that in 1993, Kenyan authorities requested the UNHCR to repatriate all the refugees because of security reasons.¹⁵⁴ The UNHCR’s acceptance to repatriate Somali refugees seem to suggest that such a decision later influenced Kenya’s justification to adopt its restrictive refugee policies and programs, which among other things enforced the repatriation of refugees for security reasons. It is therefore illogical for Kenyan authorities

¹⁵¹ Milner, *Refugees, the State and the Politics of Asylum in Africa*, 91.

¹⁵² Milner, 91.

¹⁵³ UNHCR, “Annex I: The Problems with Refugee Statistics,” p. 3.

¹⁵⁴ Milner, *Refugees, the State and the Politics of Asylum in Africa*, 90.

to assert that its new policies intended to address a high number of refugees, when the new policies were adopted in 2006 before their numbers increased in 2008.¹⁵⁵

Secondly, Kenyan politicians blame refugees for imposing a significant burden on the country's economy and security. For example, on November 20, 2003, the Minister of State in the Office of the Vice President argued that the significant number of refugees had impacted Kenya's economy, environment, and security.¹⁵⁶ In contrast to the negative economic and environmental impacts, as Kenyan politicians argue, this research observes that while refugees present some challenges to Kenya, hosting them has some benefits. For example, Hyndman and Nylund show that "refugee camps in Kenya's NEP have stimulated economic and social development in form of jobs and increased availability of commodities, primary education, and medical services."¹⁵⁷ Further, international organizations have constructed boreholes and roads, and provided jobs, which have benefited both the refugees and the local communities.¹⁵⁸

Contrarily, Kenyan politicians downplay the benefits that accrue from hosting refugees in order to continue benefiting from them. They have used refugees for political capital as an initiative to get votes while depicting refugees as a burden. For example, in the 1992 political campaigns, then-President Daniel Arap Moi promised his supporters to repatriate all Somali refugees back to Somalia. In fact, Hyndman and Nylund report that "less than a week after President Daniel Arap Moi won the Kenyan election in December 1992, he announced that refugees would be sent back to Somalia immediately."¹⁵⁹ The political benefits from refugees seem to justify why politicians portray refugees as a threat and consequently adopt restrictive policies.

¹⁵⁵ Lindley, "Between a Protracted and a Crisis Situation," 9.

¹⁵⁶ Milner, *Refugees, the State and the Politics of Asylum in Africa*, 90.

¹⁵⁷ Hyndman and Nylund, "UNHCR and the Status of Prima Facie Refugees in Kenya," 28.

¹⁵⁸ Milner, *Refugees, the State and the Politics of Asylum in Africa*, 94–5.

¹⁵⁹ Hyndman and Nylund, "UNHCR and the Status of Prima Facie Refugees in Kenya," 24.

On the international scene, Hyndman and Nylund show that Kenyan politicians portray refugees as a security burden in order to attract donor funding. They provide evidence to suggest that whereas Kenya did not welcome Somali refugees in the early 1990s, it was compelled to accept them not because of its obligations under the 1951 UN Convention but as a way of continued donor support, which was no longer flowing because of the undemocratic principles of the Kenyan state.¹⁶⁰ Milner provides similar evidence when he asserts that “the willingness of East African states generally to jump on the anti-terror bandwagon is partially motivated by their very real concerns about terrorism, but also by their desire to negotiate benefits from abroad to help them to cope with challenges at home.”¹⁶¹ Consequently, when the Kenyan authorities accepted hosting Somali refugees, in 1992, development aid resumed to flow upon their acceptance. Even though Kenya accepted hosting the refugees, however, it only allowed them to the peripheral regions of the northeast and northwest, in Dadaab and Kakuma, which are semi-desert areas.¹⁶² This is another form of segregation to demonstrate that refugees are a threat and therefore the state needs to contain them at the periphery, but even so, politicians use them to bargain for donor funding.

F. CONCLUSION

This chapter has analyzed Kenya’s refugee policies and how they respond to the dynamic security situation in the GLR. It argued that Kenya’s weak and conflictual ties with Somalis have enabled politicians to depict refugees as security threats and undeserving of the benefits they receive. Consequently, they have adopted new refugee policies in order to address the changing security dynamics, which are not connected to refugees in Kenya. The new policies and programs like encampment, repatriation, and the closure of borders are intended to reduce the number of refugees in Kenya and confine the rest in camps in order to address the security challenges. The new policies and programs have not addressed

¹⁶⁰ Hyndman and Nylund, “UNHCR and the Status of Prima Facie Refugees in Kenya,” 24.

¹⁶¹ Milner, *Refugees, the State and the Politics of Asylum in Africa*, 106.

¹⁶² Awa Abdi M, “In Limbo: Dependency, Insecurity, and Identity amongst Somali Refugees in Dadaab Camps,” *Refuge: Canada’s Journal on Refugees* 22, no. 2 (2005): 7.

the security challenges, however, because they targeted refugees instead of addressing the real issues within the Kenyan society, especially inequalities that are related to ethnicity, where they treat all Kenyan Somalis as foreigners. In fact, the successful terrorist attacks by al-Shabaab may indicate failure of Kenya's new policies and highlight the terrorists' ability to exploit the existing inequalities within Kenyan communities. The next chapter analyzes how Uganda's refugee policies respond to the protracted refugee situation in the GLR.

III. UGANDA’S REFUGEE POLICIES RESPONDING TO PROTRACTED REFUGEE SITUATION IN THE GREAT LAKES REGION

Chapter II analyzed how Kenya’s “closed-border” refugee policies respond to the protracted refugee situation in the GLR. This chapter discusses Uganda’s “open-border” refugee policies and how the country has managed to host significant number of refugees, and at the same time, maintained security. Uganda is historically a refugee host nation that maintains an “open-border” refugee policy that caters to protracted refugees in the GLR. Currently, it hosts 1.3 million refugees, making it the top refugee host nation in Africa.¹⁶³ Hosting refugees presents significant challenges including spending money to cater for their needs. For example, recent reports from the UNDP shows that Uganda spends \$323 million annually on refugee programs.¹⁶⁴ Despite all the challenges, however, Uganda has continued to accommodate refugees. Why does a poor country continue to host many refugees when other countries in the GLR are rejecting them?

This chapter argues that Uganda’s Pan-African ideology and its historical close ties with neighboring populations have led to more open policies, which can accommodate refugees irrespective of their number or country of origin. Uganda’s policies allow local integration of refugees, which makes them self-reliant to reduce the costs of their management, and creates harmony between refugees and the host communities, which reduces the possibilities of creating insecurity. Other factors like Uganda’s relative stability, its long experience in handling displaced persons since the early 1940s, and the cooperation with the UNHCR and other international humanitarian agencies, reinforce its spirit of Pan-Africanism to accommodate many refugees.

¹⁶³ UNHCR, “Global Focus: UNHCR Operations Worldwide,” Planning Summary (2018): 4, accessed April 6, 2018, <http://reporting.unhcr.org/sites/default/files/pdfsummaries/GA2018-Uganda-eng.pdf>.

¹⁶⁴ Yusuf Kiranda, Donnas Ojok, and Mathias Kamp, “A Home Away from Home? Exploring the Situation of South Sudan Refugees in Uganda,” *Konrad-Adenauer-Stiftung* (August 2017):11, accessed April 6, 2018 http://www.kas.de/wf/doc/kas_50499-1522-2-30.pdf?171026155245.

To support this argument, this chapter proceeds as follows: Section A covers Uganda's evolving refugee policies before 2006, when it adopted the 2006 Refugee Act. It also discusses how those policies relate to international and regional conventions, especially those Uganda ratified. Section B discusses Uganda's current refugee policies, which are more permissive than the colonial policies. Section C explores the factors that influence Uganda's refugee policies that respond positively to the protracted refugee situation in the GLR. Section D presents Uganda's refugee programs that result from its progressive policies, which benefit both refugees and the host communities. Section E summarizes the main argument and concludes the chapter.

A. THE EVOLUTION OF UGANDA'S REFUGEE POLICIES

Like Kenya's, Uganda's refugee policies have evolved from the British colonial policies that it inherited in 1962 after attaining independence. The first refugee policies in Uganda were the Aliens Registration Act of 1949 and the Control of Aliens Refugee Act of 1960 (CARA), which the British adopted during their colonial administration of Uganda. The Refugee Law Project observes that "the problems of the CARA begin with its failure to objectively define the term 'refugee' or to set clear criteria for refugee recognition."¹⁶⁵ In fact, Section 3(1) of the CARA, Cap. 64 of 1960 states that an "alien" means a person who is not a citizen of Uganda or a Commonwealth citizen within the meaning of section 13 of the Constitution, or a protected person within the meaning of section 2 of the Uganda Citizenship Act, or a citizen of the Republic of Ireland."¹⁶⁶ This research suggests that the CARA was inadequate and did not differentiate between aliens and refugees. As Varalakshmi et al. argue, "Aliens Registration and Control Act, enacted by the British Colonial Office in 1949, contained draconian provisions for the handling and controlling

¹⁶⁵ "Critique of the Refugees Act (2006)," Refugee Law Project, 2, accessed April 9, 2018, http://www.refugeelawproject.org/files/legal_resources/RefugeesActRLPCritique.pdf.

¹⁶⁶ "Uganda, Control of Alien Refugee Act, Cap. 64, National legislative Bodies/National Authorities," UNHCR, July 13, 1960, accessed April 9, 2018, <http://www.refworld.org/cgi-bin/txis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=544e48d84>.

of all aliens in Uganda, regardless of whether or not they were refugees.”¹⁶⁷ The provisions of the CARA seem to suggest that the colonial laws were more concerned with the control and regulation of refugees than refugee protection.

Furthermore, apart from failing to provide for refugee protection, the CARA did not mention any refugee rights that are guaranteed under the international and regional conventions that Uganda signed and ratified. For example, CARA made no mention of the right to own property, freedom of movement, or prohibiting *refoulement* and several other rights that are provided for under the international and regional conventions. In fact, the Refugee Law project described the CARA as “oppressive and archaic.”¹⁶⁸ The absence of provisions that concern refugee rights seems to suggest that the CARA was also inconsistent with the 1995 Ugandan Constitution, which is the main law of the country and respects all the international treaties and conventions which Uganda ratified.

Whereas the CARA remained in the law books of Uganda for over four decades, however, the independent state of Uganda considered not implementing it since it was colonial. In fact, Varalakshmi et al. report that “the way refugees in Uganda were actually treated, even under the 1960 law, was much more humane and protection-oriented than what the law stipulated.”¹⁶⁹ Varalakshmi et al. further reveal that the Ugandan community treated refugees as brothers and sisters who deserved assistance, protection, dignity, and respect.¹⁷⁰ This retreat from enforcing the CARA implies that Uganda needed a new law consistent with both international and regional conventions to address the specific refugee situation in Uganda. The next section discusses Uganda’s new refugee policies and how they respond to the protracted refugee situation in the GLR.

¹⁶⁷ Varalakshmi, Yehdego, Tadesse, Kalu, Nkunda, Buyinza, Okumu, and Karoline, *An Assessment of Uganda’s Progressive Approach to Refugee Management*, 8.

¹⁶⁸ Refugee Law Project, “Critique of the Refugees Act (2006),” 2.

¹⁶⁹ Varalakshmi, Yehdego, Tadesse, Kalu, Nkunda, Buyinza, Okumu, and Karoline, *An Assessment of Uganda’s Progressive Approach to Refugee Management*, 9.

¹⁷⁰ Varalakshmi, Yehdego, Tadesse, Kalu, Nkunda, Buyinza, Okumu.

B. UGANDA’S PROGRESSIVE REFUGEE POLICIES

In Uganda’s desire to repeal the colonial policies in order to conform to the international conventions that it ratified, it formulated laws and policies to further guarantee the protection of refugees. Uganda has three important legal frameworks that enable refugee protection. These are the 1995 Constitution of Uganda, the 2006 Refugees Act, and the Refugees Regulations of 2010. The 1995 Constitution is the highest law in Uganda, and it takes precedence over other laws. Chapter I, Article 2(1 & 2) emphasizes this supremacy:

(1) This Constitution is the supreme law of Uganda and shall have binding force on all authorities and persons throughout Uganda.

(2) If any other law or any custom is inconsistent with any of the provisions of this Constitution, the Constitution shall prevail, and that other law or custom shall, to the extent of the inconsistency, be void.¹⁷¹

Though Parliament has not formulated any law regarding naturalization of refugees as stipulated under Article 13 of the Constitution, Article 21(1) provides that “All persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law.”¹⁷² Specifically, Article 21(2-3) forbids discrimination and describes what it means:

(2) Without prejudice to clause (1) of this article, a person shall not be discriminated against on the ground of sex, race, color, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability.

(3) For the purposes of this article, “discriminate” means to give different treatment to different persons attributable only or mainly to their respective descriptions by sex, race, color, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability.¹⁷³

¹⁷¹ Uganda Legal Information Institute, “1995 Uganda Constitution,” accessed April 11, 2018, <https://www.ulii.org/node/23824>.

¹⁷² Uganda Legal Information Institute.

¹⁷³ Uganda Legal Information Institute.

This seems to suggest that the Ugandan Constitution provides for the rights of all people, including refugees.

In addition to the various constitutional provisions that guarantee the protection of refugees, the enactment of the 2006 Refugees Act demonstrates another step forward for the protection of refugees in Uganda. In fact, as its title shows, it is,

an Act to make new provision for matters relating to refugees, in line with the 1951 Convention relating to the status of refugees and other international obligations of Uganda relating to the status of refugees; to establish an Office of Refugees; to repeal the Control of Alien Refugees Act, Cap. 62; and to provide for other related matters.¹⁷⁴

Unlike the Control of Aliens Refugees Act, which emphasizes the control instead of the protection of refugees, the 2006 Refugees Act cites the international and regional obligations to protect refugees. The Act is therefore consistent with the provisions of international and regional conventions and at the same time resonates well with the 1995 Constitution, which nullifies other laws inconsistent with it and other international laws that Uganda ratified.

Although the 2006 Refugees Act contains several provisions that give refugees the freedom of movement, freedom to access jobs, and other rights, it has some limitations. Some critics like the Refugee Law Project have argued that though the Act contains “some deficits, loopholes, inadequacies, room for excesses, and glaring omissions in the Refugees Act, all of which potentially erode the progressive and protection orientation of the Act and threaten to lower its compliance with international protection standards considerably.”¹⁷⁵ Some of the contradictions in the Refugees Act include freedom of movement under Section 30, granting of refugee status under Section 20, extradition of refugees under Section 41, and many other contradictions, to mention but a few. For example, Section 30(1-2) states that,

¹⁷⁴ Uganda, “Refugee Act 2006 Act 21,” 3.

¹⁷⁵ Citizenship Rights in Africa Initiative, “Uganda: Critique of the Refugees Act (2006).

(1) Subject to subsection (2) of this section, a recognized refugee is entitled to free movement in Uganda

(2) The free movement of a recognized refugees in Uganda is subject to reasonable restrictions specified in the laws of Uganda, or directions issued by the Commissioner, which apply to aliens generally in the same circumstances, especially on grounds of national security, public order, public health, public morals or the protection of the rights and freedoms of others.¹⁷⁶

In response to these critiques, the government of Uganda adopted additional legislation to address some of the inconsistencies within the 2006 Refugees Act. Using Section 48(1) of the Act, the Parliament of Uganda enacted the Refugee Regulations on May 29, 2009.¹⁷⁷ That new regulation came into force in 2010 and it is cited as Refugees Regulations 2010. With the two legislations in place, incorporating both international and regional conventions in order to be enforced by courts, Ugandan policies embody most of the key provisions for the protection of refugees, including rights to property, employment, and freedom of movement.

First, the Ugandan refugee policies provide for property rights, especially access to means of production like land. In fact, Section 29(1) of the 2006 Refugees Act affirms its relationship with other laws when it states that “refugee shall, subject to this Act, the OAU Convention and Geneva Convention,”¹⁷⁸ enjoy various privileges, rights, and protection measures while in Uganda, and in fact, this section summarizes and confirms those rights and privileges enjoyed as,

(iii) education, other than elementary education for which refugees must receive the same treatment as nationals;

(iv) the right to engage in agriculture, industry, handicrafts, and commerce and establish commercial and industrial companies in accordance with the applicable laws and regulations in force in Uganda;

¹⁷⁶ Uganda, “Refugee Act 2006 Act 21,” 25–6.

¹⁷⁷ National Legislative Bodies/National Authorities, “Uganda: The Refugees Regulations, 2010 No. 9,” accessed April 10, 2018, <http://www.refworld.org/docid/544e4f154.html>.

¹⁷⁸ Uganda, “Refugee Act 2006 Act 21,” 23.

(vi) the right to have access to employment opportunities and engage in gainful employment;

(2) A refugee shall be accorded the same protection as is accorded to the nationals of Uganda in respect of the protection of intellectual property rights, including industrial inventions, patents, designs, trade names, copyrights and other artistic and scientific works.¹⁷⁹

From these examples of the rights and obligations, the chapter further explores the protection standards and the rights refugees enjoy under the Refugees Regulations of 2010, which reinforces the 2006 Refugee Act. For example, Section 29 of the 2006 Refugees Act gives a right to refugees to engage in agriculture but does not specify how they can access land. The Refugees Regulations of 2010 explain how refugees can access land. Section 65 of the Refugees Regulations 2010 states that “(1) A refugee who is residing in a designated refugee settlement or a refugee area shall have free access to use land for the purposes of cultivation or pasturing, except that they shall have no right to sell, lease or otherwise alienate the land that has been allocated to them strictly for their individual or family utilization.”¹⁸⁰

Second, Uganda’s policies give refugees the right to employment. That right to employment seem to be a unique provision because some countries in the GLR like Kenya blame refugees for causing unemployment and reject them on the same grounds. For example, in Kenya, Section 16(4) of its Refugees Act states that “every refugee and member of his family in Kenya shall, in respect of wage-earning employment, be subject to the same restrictions as are imposed on persons who are not citizens of Kenya.”¹⁸¹ This justifies that, in the labor market, Kenyan policies treat refugees differently from its nationals.

Third, the Ugandan policies give refugees freedom of movement, which is not the case with other refugee host nations in the GLR of Africa or in the Horn of Africa. In fact, Varalakshmi et al. argue that “Uganda is the only country in the Horn of Africa with a

¹⁷⁹ Uganda, “Refugee Act 2006 Act 21,” 23–5.

¹⁸⁰ National Legislative Bodies/National Authorities, “Uganda: The Refugees Regulations,” 19.

¹⁸¹ Kenya, *Refugees Act No. 13 of 2006*, 12, accessed April 10, 2018, http://www.kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/RefugeeAct_No13of2006.pdf.

domestic refugee law that explicitly provides for the freedom of movement for refugees.”¹⁸² In comparison with other countries’ policies like Kenya, Section 16(2) of its Refugees Act restricts refugees to designated camps, and there are serious restrictions on their movements.¹⁸³ In Uganda, under Section 29(1)(a) of its Refugee Act, the government gives refugees identity cards to facilitate easy identification and protection during movement.¹⁸⁴

In brief, Uganda’s laws incorporate various provisions of both international and regional conventions that guarantee refugee rights and privileges. The next section discusses the factors that influence Uganda’s refugee policy framework. The analysis of those factors facilitates our understanding of why Uganda has adopted an “open-border” policy and how it manages to host the significant number of refugees despite the economic, political, security, and environmental challenges related to hosting refugees.

C. FACTORS INFLUENCING UGANDA’S REFUGEE POLICIES

Contrary to Kenya’s weak and conflictual ties with Somalis, which influence its refugee policies, the Pan-African ideology and strong historical ties with neighboring populations influence Uganda’s refugee policies. Those factors are unique because in other African countries, including the GLR countries like Kenya and Tanzania, security, economic, and environmental factors influence refugee policies.¹⁸⁵ Milner observes that “host states in Africa do not formulate their asylum policies in a political vacuum. Instead asylum policies are affected by a range of political, economic, and historical factors, often unrelated to the presence of refugees.”¹⁸⁶ On the African continent, refugees in the newly independent African states of the early 1960s through the 1980s enjoyed a lot of freedom, and Milner observes that hosting refugees was a form of pride because of the benefits that

¹⁸² Varalakshmi, Yehdego, Tadesse, Kalu, Nkunda, Buyinza, Okumu, and Karoline, *An Assessment of Uganda’s Progressive Approach to Refugee Management*, 15.

¹⁸³ Kenya, Refugees Act No. 13 of 2006, National Council for Law Reporting, 12.

¹⁸⁴ Uganda, Refugees Act No. 21 of 2006, p. 24.

¹⁸⁵ Milner, *Refugees, the State and the Politics of Asylum in Africa*, 161.

¹⁸⁶ Milner, 161.

were associated with refugees.¹⁸⁷ He gives examples of how Ugandan-educated refugees contributed to the development of Kenya's education sector in the 1970s.

Furthermore, Milner shows that from the start of the 1990s when the number of refugees increased in Africa due to civil wars, the perception about refugees changed, and host nations started to blame refugees for all sorts of negative things, ranging from causing insecurity and economic burdens and environmental degradation.¹⁸⁸ At the same time, refugees had stayed in host nations for too long, and the donor community reduced funding. To this effect, some African nations shifted their policies from being permissive to more restrictive in a bid to reduce the number of refugees.¹⁸⁹ Uganda, however, has maintained its "open-border" policy of hosting refugees irrespective of their numbers, race, sex, nationality, or religion.

While Uganda's Pan-African ideology and historical close ties with neighboring populations have led to more open policies, there are also other factors at play. Those factors include Uganda's geographical location in a conflict-prone region and a realization that refugees are in a protracted situation, cultural and linguistic commonalities that facilitate local integration, Uganda's political stability for the last two decades, good working relations with the UNHCR and other international agencies who have supported refugee programs, and the long experience in hosting displaced persons. The section discusses how Uganda's Pan-African ideology and its historical relationships with refugee populations have influenced the formulation of permissive refugee policies, and then explores those factors that facilitate and motivate the success of those policies.

1. The Role of Pan-Africanism

Pan-African ideology is the foundation of Uganda's permissive refugee policies. Pan-Africanism is an idea that honors common interests of all African peoples with a call for assistance in times of need, and unification irrespective of tribe, religion, or political

¹⁸⁷ Milner, *Refugees, the State and the Politics of Asylum in Africa*, 2.

¹⁸⁸ Milner, 2.

¹⁸⁹ Milner, 2.

affiliation. The current political leadership that has been running the affairs of the Ugandan state for more than 30 years are followers of former African leaders like Julius Nyerere of Tanzania and Kwame Nkrumah of Ghana who, during the early struggles of independence, promoted the spirit of Pan-Africanism. For example, in 2015, at Summit in South Africa, the Ugandan President Yoweri Museveni had this to say in respect to refugees:

We handle the refugees well because we do not believe in the colonial borders. We cannot accept that the French, the English, etc., could come and say these are Congolese, these are Ugandans, these are South Sudanese, these are Tanzanians, these are Kenyans, etc. Yes, we recognize that reality but we also know that these people are our relatives. They are Africans. They are part of the Bantu groups that are found in Uganda. They are part of the Nilotic groups that are found in Uganda. They are part of the Cushitic groups that are found in Uganda. Uganda, therefore, is their home.¹⁹⁰

The narrative by President Museveni demonstrates that apart from promoting the spirit of Pan-Africanism, the cultural and linguistic commonalities among peoples neighboring Uganda influence its permissive refugee policies. Whereas the colonial borders separated people who share the same cultures, language, or tribes, hosting refugees who share the same cultures facilitates local integration. Refugees can stay with their tribe members, which fosters harmony between refugees and the host communities and reduces conflicts. In this case, the role of politics is to reinforce this possibility of coexistence with permissive policies. For example, Section 61 of the 2010 Refugees Regulations Act states that “the Commissioner shall liaise with the national, local and regional planning authorities for the purposes of ensuring that refugee concerns and related matters are taken into consideration in the initiation and formulation of sustainable development and environmental plans.”¹⁹¹ This research suggests that the political decision that is guided by the spirit of Pan-Africanism influences the formulation of permissive refugee policies. Those policies allow local integration of refugees into host communities, which enables

¹⁹⁰ H.E. Yoweri Kaguta Museveni, *Statement at the 23rd Summit of the African Peer Review Forum*, (State House of Uganda), 7, accessed April 10, 2018, <http://www.statehouse.go.ug/media/speeches/2015/06/14/statement-23rd-summit-african-peer-review-forum>.

¹⁹¹ National Legislative Bodies/National Authorities, “Uganda: The Refugees Regulations,” 18.

effective protection because of the similar characteristics that exist among Ugandans and neighboring communities/countries that generate refugees.

Although ethnic and cultural commonalities exist among Ugandans and the majority of refugees, however, in the absence of the spirit of Pan-Africanism that calls for the assistance of other Africans irrespective of their tribe, religion or sex, even local integration is not possible. For example, there are many Kenyans of Somali origin in the northeastern part of Kenya, but Kenyan politicians treat Somali refugees from Somalia not as brothers, but as a threat. On the contrary, there are no cultural, tribal, or linguistic relations between Ugandans and Somalis and they do not share a common border, but Uganda hosts 42,826 Somali refugees as Figure 8 illustrates.¹⁹²

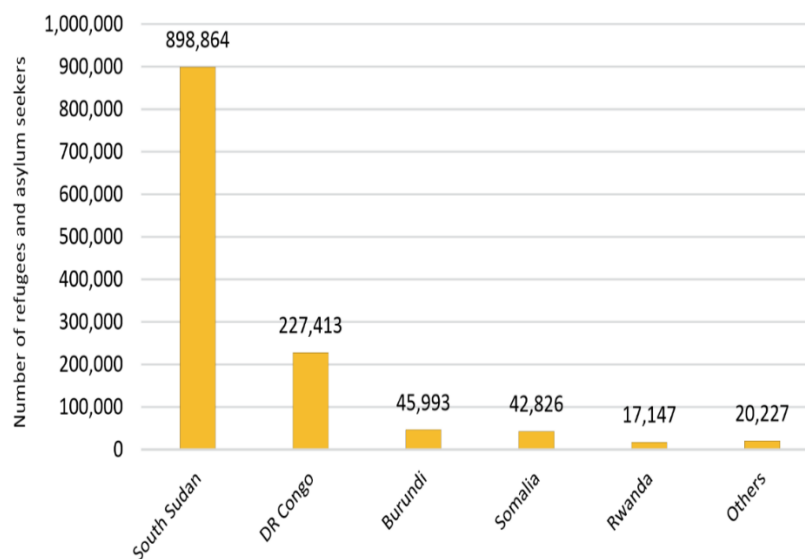


Figure 8. Uganda: Number of Refugees Per Country of Origin as of June 2017.¹⁹³

In the spirit of Pan-Africanism, which honors all Africans as one people, the Ugandan government and its communities have hosted Somali refugees. This could be the

¹⁹² Malango, “Uganda’s Contribution to Refugee Protection and Management,” 5.

¹⁹³ Source: Malango.

case because of the Pan-Africanism spirit that in 2007, Uganda became the first African country to deploy troops in Somalia, under AMISOM, at a time when even the international community had abandoned the Somalis. In fact, Marco Jowell asserts that “AU peace operations are different, informed in part by the ‘global war on terror,’ but also by the ideology of Pan-Africanism and African solutions to African problems.”¹⁹⁴ Indeed, Jowell contends that “the influx of refugees from regional conflict hot spots such as DRC, Somalia, South Sudan and elsewhere is a further motivating factor to effectively deal with regional conflict issues.”¹⁹⁵ As Figure 9 demonstrates, Uganda’s deployment of troops in Somalia was in line with the Pan-African ideology of assisting fellow Africans, who had lived in a protracted refugee situation.

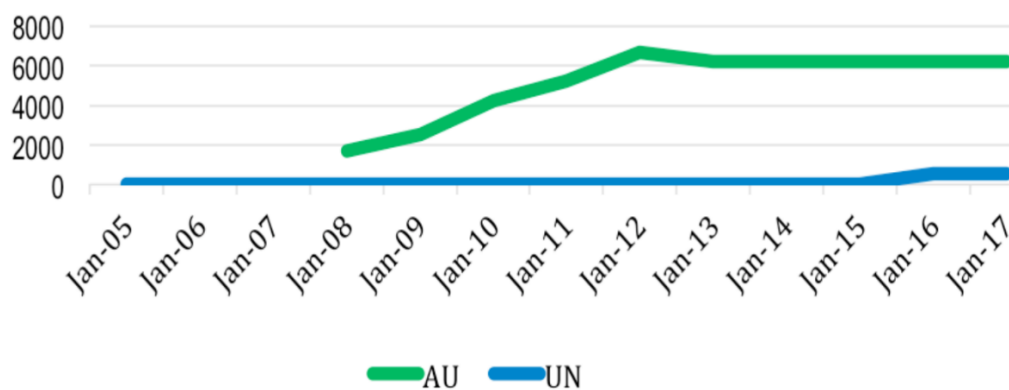


Figure 9. 2007–2017, Uganda’s Peacekeeping Troops in Somalia.¹⁹⁶

As Figure 9 illustrates, Uganda deploys many more troops under AU Missions than UN Missions, suggesting a strong commitment to Africa in particular.

Further, a statement by Uganda’s Minister of Finance, Matia Kasaija, who was a refugee in Kenya during Amin’s regime in Uganda, shows that Uganda’s Pan-Africanism

¹⁹⁴ Marco Jowell, “Peacekeeping Country Profile: Uganda,” *Providing for Peacekeeping*, April 3, 2014 (Updated April 2018), accessed May 11, 2018, <http://www.providingforpeacekeeping.org/2014/04/03/country-profile-uganda/>.

¹⁹⁵ Jowell, “Peacekeeping Country Profile: Uganda.”

¹⁹⁶ Jowell.

ideology influences its refugee policies. He asserts that, “Many of us in this government have been refugees. We do not want to see our brothers and sisters suffer because of the turmoil in their place. If we had land and these guys came and started growing something, they are helping themselves but also helping the economy.”¹⁹⁷ The minister’s narrative suggests that though there are benefits that accrue from hosting refugees, it is Uganda’s Pan-Africanism ideology that drives its policies.

Even more, Uganda’s Pan-Africanism ideology influences it to intervene in conflicts that generate refugees. In December 2013, Uganda responded to the South Sudan ethnic conflict between the Dinka and the Nuer and prevented what would be genocide. By 2012, the number of refugees in Uganda had started increasing. Uganda received more refugees after withdrawing its troops from South Sudan as Figure 10 illustrates.

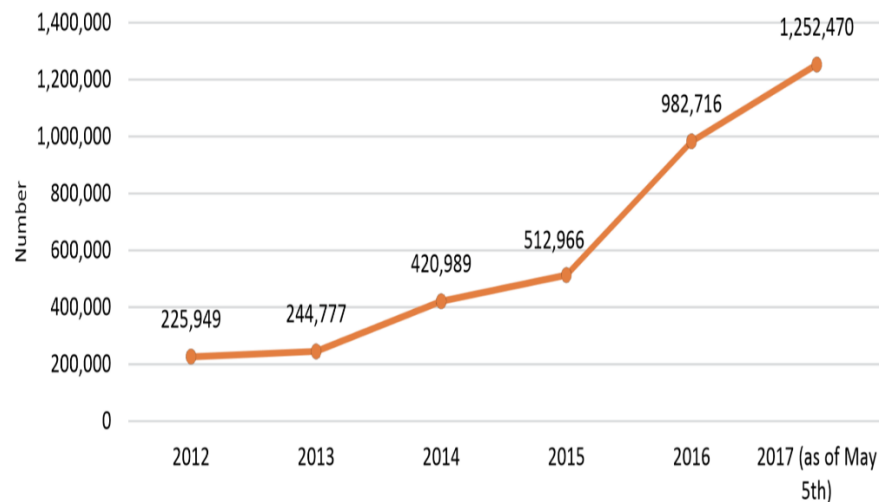


Figure 10. Refugee Influx in Uganda 2012–2017.¹⁹⁸

¹⁹⁷ John Aglionby, “Uganda’s Open Refugee Policy Tested by Civil War in South Sudan,” *Financial Times*, April 26, 2017, accessed May 13, 2018, <https://www.ft.com/content/a2efa5ea-1557-11e7-b0c1-37e417ee6c76>.

¹⁹⁸ Source: Rosa Malango, “Uganda’s Contribution to Refugee Protection and Management,” 3.

As Figure 10 demonstrates, in 2015, the number of refugees in Uganda increased when Uganda started withdrawing its troops from South Sudan. Even more, though, by 2017, many South Sudan refugees sought asylum in many other countries including Kenya, which received 95,283 refugees, Uganda received 852,281 refugees, as Figure 11 shows.

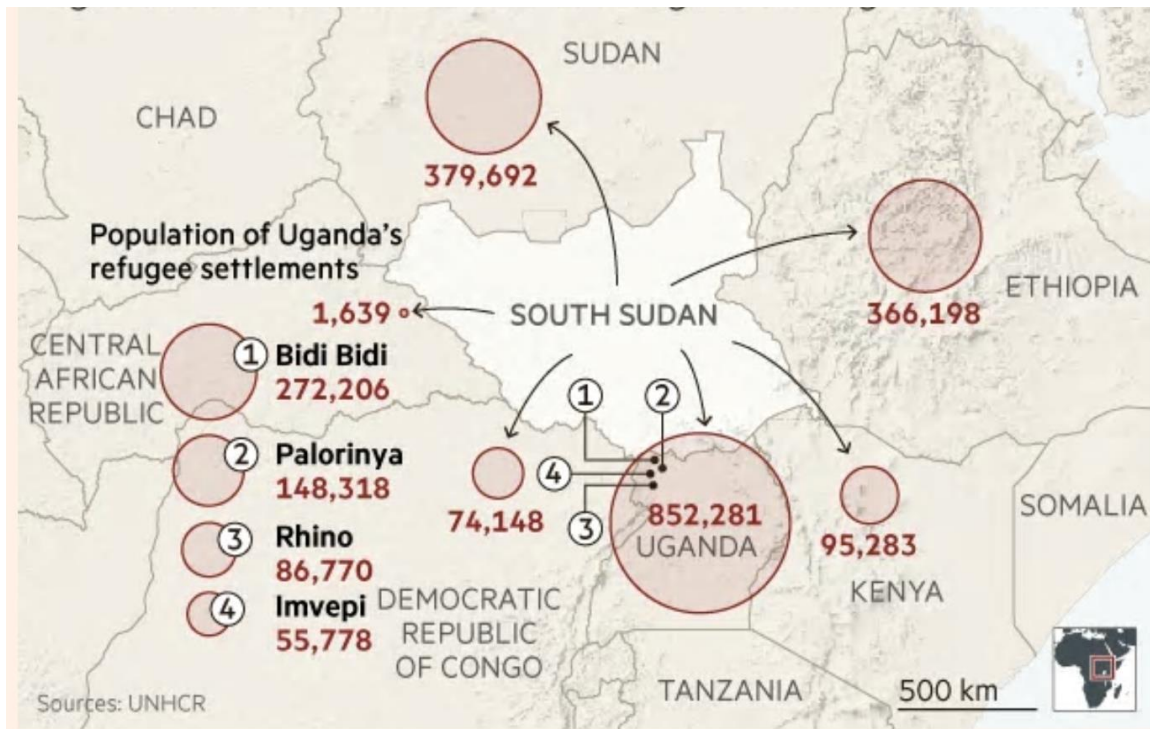


Figure 11. South Sudan Refugees Fleeing Civil War to Neighboring Countries.¹⁹⁹

As Figure 11 illustrates, Uganda received almost half of the total refugees who sought asylum in other countries. This seems to suggest that refugees had appreciated Uganda's spirit of Pan-Africanism when it stopped the genocide in South Sudan, and the majority sought asylum in Uganda, which they consider as their alternative home.

¹⁹⁹ Source: John Aglionby, "Uganda's Open Refugee Policy Tested by Civil War in South Sudan," Financial Times, April 26, 2017, accessed May 13, 2018, <https://www.ft.com/content/a2efa5ea-1557-11e7-b0c1-37e417ee6c76>.

2. Other Factors That Motivate Pan-African Ideology

Besides Uganda's Pan-Africanism and its historical relationships with refugee populations, there are other motivating factors like political stability, experience in handling refugees, geographical location, and its good working relationship with refugee agencies like UNHCR that have enabled Uganda to adopt permissive refugee policies. Those factors seem to be uniform across the GLR, but they have influenced each country's policies differently. Uganda acknowledges that refugees in the GLR are there for a long time, and they can also contribute both to their sustenance and the development of the country. Consequently, although it is rare for host nations to include refugees in their national development plans, it is the core of Uganda's refugee management success story.²⁰⁰ The next section discusses innovative refugee management and development programs that have enabled it to overcome the challenges associated with hosting refugees.

D. UGANDA'S REFUGEE MANAGEMENT AND DEVELOPMENT PROGRAMS

Uganda's refugee policies, which allow local integration and freedom of movement, enable it to implement programs that can mitigate the challenges associated with hosting refugees, which, in turn, enable Uganda's government to maintain a consistently permissive approach to refugee management. Many refugee host nations are struggling with refugees partly because of their policies that limit refugees' freedoms and rights. In addition, they perceive that refugees are visitors who will stay for a short period and go back to their countries. Jeff Crisp refutes the view that refugees stay for a short period and contends that "protracted refugee situations are to be found in most parts of the world, with the general exception of Central and South America. But by far the majority of these situations are to be found in Africa."²⁰¹ He further asserts that "refugees can be regarded as being in a protracted situation when they have lived in exile for more than five

²⁰⁰ Varalakshmi, Yehdego, Tadesse, Kalu, Nkunda, Buyinza, Okumu, and Karoline, *An Assessment of Uganda's Progressive Approach to Refugee Management*, 19.

²⁰¹ Jeff Crisp, "No Solution in Sight: The Problem of Protracted Refugee Situations in Africa," *Center for Comparative Immigration Studies*, Working Paper no. 68 (December 2002): 1, <https://escholarship.org/uc/item/89d8r34q>.

years, and when they still have no immediate prospect of finding a durable solution to their plight by means of voluntary repatriation, local integration, or resettlement.”²⁰² This thesis suggests that restrictive policies like encampment not only limit refugees’ rights and freedoms, but they also frustrate their initiatives to contribute to the development of their host nations. Further, Ilcan et al. argue that programs like the Self Reliance Strategy (SRS) empowers refugees to depend less on UNHCR donations.²⁰³

With respect to the protracted refugee situation, Uganda’s policies allow refugees to stay in settlements as opposed to camps. According to the UNDP, the 2016 UN Summit on refugees declared Uganda’s refugee policy to be the most progressive in the world,²⁰⁴ which provides for the integration of refugees. Refugees stay in settlement villages with the host communities as opposed to camps and are given a piece of land for settlement and agriculture. Because of the privileges refugees get because of Uganda’s policies, the UN Secretary General, Antonio Guterres, in June 2017 while touring refugee hosting districts in Uganda had this to say:

It important to underline that Uganda, in the past, received these South Sudanese refugees and I had the opportunity when visiting the same area that I visited yesterday, to see that they were not in camps but in so-called settlements that are in reality villages, like villages of the Ugandan people. This allows them to farm the land, allows them to go to the same schools, the same health centers, to have jobs, to allow them to have normal lives, to live in dignity.²⁰⁵

In addition, Uganda’s policies also recognize that refugees are not temporary visitors and that they can also contribute to their own wellbeing and to the development of

²⁰² Crisp, “No Solution in Sight: The Problem of Protracted Refugee Situations in Africa,” Abstract.

²⁰³ Suzan Ilcan, Marcia Oliver and Laura Connoy, “Humanitarian Assistance and the Politics of Self-Reliance: Uganda’s Nakivale Refugee Settlement,” Centre for International Governance Innovation, no. 86 (December 2016): 1, https://reliefweb.int/sites/reliefweb.int/files/resources/cigi_paper_no.86.pdf, accessed April 13, 2018.

²⁰⁴ “Uganda’s Contribution to Refugee Protection and Management,” United Nations Development Programme, 2017, 1, accessed April 12, 2018, <https://reliefweb.int/sites/reliefweb.int/files/resources/UNDPUG17-Uganda%20Contribution%20to%20Refugee%20Hosting-Study%20Summary.pdf>.

²⁰⁵ Watera, Seremba, Otim, Ojok, Mukhone, and Hoffmann, “Uganda’s Refugee Management Approach Within the EAC Policy Framework,” 8.

their host nations. Uganda has designed and implemented several refugee development programs that include, in chronological order of their implementation, the Self-Reliance Strategy (SRS), Development Assistance to Refugee-hosting Areas, Settlement Transformative Agenda, and the Refugee and Host Community Empowerment Strategy (ReHoPE), to mention but a few. This section discusses Uganda's refugee management and development programs that address the needs of both its refugees and their host communities, which has enabled it to overcome some of the challenges of hosting the significant number of refugees.

1. Self-Reliance Strategy

Uganda started implementing the self-reliance program in 1998 with the intention of integrating services that benefit both refugees and host communities. The self-reliance program, as its name suggests, intends to make refugees self-reliant and to depend less on relief assistance. According to the UNHCR, "self-reliance is the social and economic ability of an individual, a household or a community to meet essential needs (including protection, food, water, shelter, personal safety, health and education) in a sustainable manner and with dignity. Self-reliance, as a program approach, refers to developing and strengthening livelihoods of persons of concern, and reducing their vulnerability and long-term reliance on humanitarian/external assistance."²⁰⁶ As well, Gilbert M. Burnham et al. report that the SRS targeted refugees from three districts of the West Nile region, Adjumani, Arua, and Moyo, which at that time hosted a significant number of refugees from Sudan and DRC, yet the region is poor and remote as Figure 12 shows.

²⁰⁶ "Why Self-Reliance? Book 1," UNHCR, 1, accessed April 13, 2018, <http://www.unhcr.org/44bf3e252.pdf>.



Figure 12. West Nile Region Refugee-Hosting Districts of Adjumani, Arua, and Moyo.²⁰⁷

The SRS aligns with the provisions of Uganda’s refugee policies. For example, Section 44 empowers the Minister in charge of refugees to promote local integration and, at the same time, empowers the Commissioner for refugees to collaborate with the UNHCR and other NGOs to promote development and self-reliance.²⁰⁸ The SRS has succeeded because it was formulated in line with Uganda’s permissive refugee policies, which provide for harmonious relations between the host communities and the refugees, as opposed to the restrictive policies like encampment, that confine refugees into camps.

²⁰⁷ Source: Gilbert M. Burnham, Elizabeth A. Rowley, and Martins O. Ovberedjo, “Quality Design: A Planning Methodology for the Integration of Refugee and Local Health Services, West Nile, Uganda,” *Disaster*, 27, no.1 (March 2003): 57, <https://doi.org/10.1111/1467-7717.00219>.

²⁰⁸ Uganda, Refugees Act No. 21 of 2006, p. 33–4.

In addition to being responsive to national policies, Uganda initiated the SRS because of the protracted nature of its refugees. Varalakshmi et al. report that though by the time Uganda introduced the SRS it hosted few refugees (about 200,000 from Sudan), there were no indicators of an immediate solution to those factors that caused their displacement.²⁰⁹ Furthermore, during the same period, the UNHCR stopped financing refugee programs in the West Nile region, yet Uganda could not repatriate them. In fact, Gilbert M. Burnham et al. report that “UNHCR decided to phase out financing for refugee programs in the West Nile area...because of both a shrinking global resource base, and the fact that the West Nile region was no longer considered an emergency and therefore did not fall directly under the agency’s mandate.”²¹⁰ Because of the UNHCR’s redirection of its funds to other areas, the facilitation for refugees in Uganda was reduced as Figure 13 illustrates.

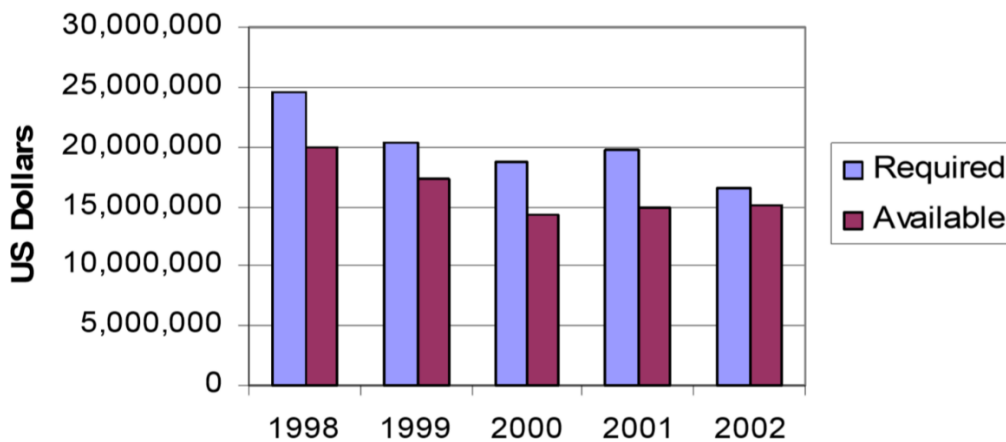


Figure 13. UNHCR Funding for Uganda, 1998–2002.²¹¹

²⁰⁹ Varalakshmi, Yehdego, Tadesse, Kalu, Nkunda, Buyinza, Okumu, and Karoline, *An Assessment of Uganda’s Progressive Approach to Refugee Management*, 20.

²¹⁰ Burnham, Rowley, and Ovberedjo, “Quality Design,” 57.

²¹¹ Source: Burnham, Rowley, and Ovberedjo, 58.

With the reduced funding for refugees as Figure 13 illustrates, and the protracted nature of the refugees' situation, the SRS helped to sustain refugees by integrating service delivery where the host communities shared facilities with the refugees.

With respect to integrating service delivery, Uganda intended to promote coexistence between refugees, aligned with its policies that allow integration. Specifically, Section 44(1)(b) of Uganda's Refugees Act of 2006,²¹² and Section 60 of the 2010 Refugees Regulations,²¹³ all provide for the integration of refugees into host communities. Burnham et al. assert that the SRS erodes the parallel delivery system especially where multiple service providers do not coordinate with the government.²¹⁴ They further argue that integrated services minimize the costs of management, improve service delivery, and benefit both refugees and the host communities.²¹⁵ Even more, Varalakshmi et al. assert that integrating services promotes coexistence between refugees and the host communities, which reduces resentment that creates conflicts.²¹⁶ In some host countries like Kenya, refugee host communities tend to reject refugees because they view them as being more favored than them, which generates conflicts.²¹⁷ This situation results from the government's inability to provide services to the host communities who perceive refugees as competitors for scarce resources. This research suggests that because of the harmonious coexistence between refugees and the host communities, Uganda has not had problems with refugees and keeps its borders open to host more because of its refugee programs. To further facilitate the harmonious relationship between refugees and their host communities, Uganda implemented the Development Assistance to Refugee-Hosting Areas program.

²¹² Uganda, Refugees Act No. 21 of 2006, p. 33–4.

²¹³ National Legislative Bodies/National Authorities, "Uganda: The Refugees Regulations," 18.

²¹⁴ Burnham, Rowley, and Ovberedjo, "Quality Design," 54.

²¹⁵ Burnham, Rowley, and Ovberedjo, 60.

²¹⁶ Varalakshmi, Yehdego, Tadesse, Kalu, Nkunda, Buyinza, Okumu, and Karoline, *An Assessment of Uganda's Progressive Approach to Refugee Management*, 20.

²¹⁷ Watera, Seremba, Otim, Ojok, Mukhone, and Hoffmann, "Uganda's Refugee Management Approach Within the EAC Policy Framework," 13.

2. Development Assistance to Refugee-Hosting Areas

The Development Assistance to Refugee-Hosting Areas program was introduced in 2004 to transform areas that host many refugees and to consolidate the achievements of the SRS and address some of its challenges. The program is structured on Uganda's policy of integration, which allows refugees to stay within their host communities, and it recognizes that they can benefit the economy of their host nation.²¹⁸ While the SRS targeted three districts of Adjuman, Arua, and Moyo, the Development Assistance to Refugee-Hosting Areas incorporated other districts of Hoima, Isingiro, Kyenjojo, Masindi, and Yumbe, as Figure 14 shows.

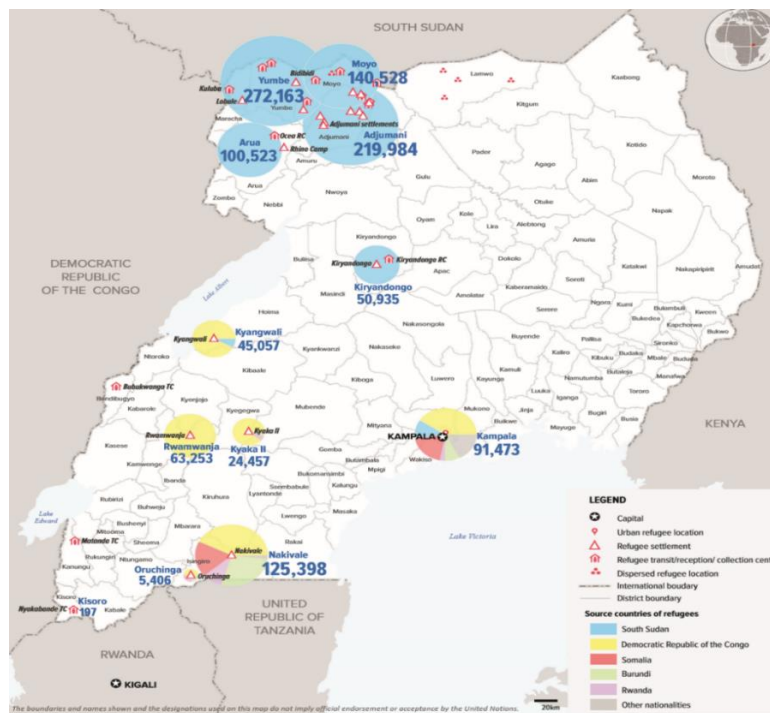


Figure 14. Map of Uganda Showing Refugee Settlement Districts.²¹⁹

²¹⁸ Varalakshmi, Yehdego, Tadesse, Kalu, Nkunda, Buyinza, Okumu, and Karoline, *An Assessment of Uganda's Progressive Approach to Refugee Management*, 22.

²¹⁹ Source: Watera, Seremba, Otim, Ojok, Mukhone, and Hoffmann, "Uganda's Refugee Management Approach Within the EAC Policy Framework," 6.

The Development Assistance to Refugee-Hosting Areas program intends to improve the lives of the local communities who share the burden of hosting refugees, which, in turn, benefits the refugees. The program recognizes the protracted nature of the refugees housed in the eight districts and in order to promote good relations, it sought to assist the host communities by improving agriculture, the management of land, improving access to those remote areas, and offering health and education services. Watera et al. argue that “Whereas the host countries have shown a willingness to accommodate the plight of refugees, they are reluctant to bear the further costs involved in diverting the considerable resources and adjusting infrastructure that may be needed to accommodate refugees.”²²⁰ The success of this program depends on the availability of land, however, which is increasingly becoming scarce as the population for both refugees and the local communities increase. To overcome this challenge, the government introduced the Settlement Transformative Agenda with the aim of managing land for efficient utilization.

3. Settlement Transformative Agenda

The Settlement Transformative Agenda, like the Development Assistance to Refugee-Hosting program, targets the refuge-hosting areas not only in the five districts but also in other areas that host refugees. One of the major areas to address is the issue of efficient utilization of the designated areas for refugee settlements to increase their productivity and explore avenues of acquiring land in other areas to address the increasing number of refugees. According to Watera et al., the program intends to achieve six objectives: land management for sustainable development, foster relations between the hosts and refugees, ensure the rule of law prevails, preserve the environment, develop infrastructures, and empower both the refugees and their hosts to participate in socioeconomic development.²²¹

From these objectives, this research suggests that empowering and integrating refugees in host communities helps to prevent conflicts among refugees and their host

²²⁰ Watera, Seremba, Otim, Ojok, Mukhone, and Hoffmann, “Uganda’s Refugee Management Approach Within the EAC Policy Framework,” 13.

²²¹ Watera, Seremba, Otim, Ojok, Mukhone, and Hoffmann, 24.

communities and to ensure the efficient use of the scarce resources to reduce conflicts and the burden of hosting refugees. Empowering and integrating refugees seem to enable Uganda to accommodate more refugees than other countries in the GLR. Uganda has effectively implemented programs that ensure the protection of refugees, and its good cooperation with other international organizations seems to have enabled it to obtain further funding. The WB, UNHCR, and other agencies have funded another, the ReHoPE, to further consolidate the achievements of the SRS.

4. The Refugee and Host Community Empowerment Strategy

The ReHoPE strategy is a UNHCR-, UN-, and WB-funded program that intends to consolidate the achievements of the SRS and address its challenges. Omata and Kaplan find evidence of the successes of the SRS in refugee settlement areas where the integrated refugees are doing different types of businesses to sustain themselves as Table 3 illustrates.²²²

²²² Naohiko Omata and Josiah Kaplan, “Refugee Livelihoods in Kampala, Nakivale and Kyangwali Refugee Settlements: Patterns of Engagement with the Private Sector,” Refugee Studies Centre, Oxford Department of International Development, Working Paper Series No.95 (October 2013): 16, <https://www.rsc.ox.ac.uk/files/files-1/wp95-refugee-livelihoods-kampala-nakivale-kyangwali-2013.pdf>.

Table 2. Main Livelihood Strategies in Nakivale and Kyangwali Refugee Settlement Areas.²²³

Types	Activities
Farming	Selling agricultural crops, brokerage of crops with locals
Animal husbandry	Rearing livestock
Petty trade	Selling general merchandise (i.e. soap, match boxes, cooking oil)
Wholesale businesses	Selling food items, beverage and general merchandise
Food-related businesses	Restaurant, bar, butchery, brewery, selling beverages
Entertainment	Running movie theatres, selling digital music
Technical services	Electrician, mechanic, carpentry, craft-making
Beauty care	Hair salon
Clothing	Tailoring, selling clothing textiles/second-hand cloth and shoes
Finance	Money transfer, Forex bureau, micro-finance
Transportation	Boda-boda (motorbike taxi), taxi, mini-bus
Medical work	Running a pharmacy, nursing
Accommodation	Running a guesthouse/lodge
Manual work	Construction, farming for others, housekeeping chores for others
Institutional employment	Working for UNHCR IPs and OPs
Electricity	Power supply using generators
Negative coping strategies	Commercial sex, begging

In contrast to Omata and Kaplan’s findings, Ilcan et al. observe that “although SRSs are framed in terms of providing benefits to refugees, little attention has been given to understanding the challenges of integrating refugees into host societies.”²²⁴ They argue that refugees are from different walks of life and have varied experiences as well as their needs, which calls for diversified approaches. Therefore, to consolidate the achievements of the SRS and, at the same time, address its challenges, the Ugandan government implemented ReHoPE by developing refugee hosting areas. ReHoPE achieved its objective by improving social service delivery and ensuring security for both refugees and their hosts in order to depend less on humanitarian aid.²²⁵ This chapter observes that Uganda’s good

²²³ Source: Omata and Kaplans, “Refugee Livelihoods in Kampala, Nakivale and Kyangwali Refugee Settlements: Patterns of Engagement with the Private Sector,” 16.

²²⁴ Ilcan, Oliver and Connoy, “Humanitarian Assistance and the Politics of Self-Reliance: Uganda’s Nakivale Refugee Settlement,” 6.

²²⁵ Varalakshmi, Yehdego, Tadesse, Kalu, Nkunda, Buyinza, Okumu, and Karoline, *An Assessment of Uganda’s Progressive Approach to Refugee Management*, 25.

cooperation with international organizations, which sponsor refugee development programs, its flexible policies, and commitment to its international obligations to protect the lives and rights of refugees seem to contribute to its capacity that enables it to host many refugees where some countries reject them.

Whereas earlier programs achieved some successes especially in empowering refugees to be productive as seen in Table 3, ReHoPE intends to centralize and coordinate the services of the different organizations and those of the government so as to avoid the duplication of services and wastage of resources. As a way of addressing the challenges that accrue from hosting refugees from different countries and bearing in mind that refugees are of the protracted situation, ReHoPE established forums to handle security issues among refugees. Varalakshmi et al. report that apart from South Sudanese refugees “there is a regional security mechanism in place for peace and security—the Framework of Hope: Peace, Security, and Cooperation Framework for the Democratic Republic of Congo and the Region, the High Commissioner’s Global Initiative for Somali Refugees, and the Comprehensive Strategy for the Rwandan Refugee Situation.”²²⁶ Such security mechanisms seem to promote coexistence among refugees from different countries and between refugees and host communities. This research suggests that successful program outcomes that empower refugees and their host communities may be one of the reasons why Uganda has not had security-related challenges with hosting refugees and hence its continued approach to an “open-door” policy.

E. CONCLUSION

This chapter has discussed how Uganda’s refugee policies evolved from the restrictive colonial policy of the CARA of 1960 to the more permissive 2006 Refugees Act and the Refugee Regulations of 2010, which are also consistent with global, regional, and domestic laws. The flexible policies have enabled Uganda to implement programs for the benefit of both the refugees and their hosts, making them self-reliant, reducing the cost of their administration, and promoting coexistence, thereby leading to management programs

²²⁶ Varalakshmi, Yehdego, Tadesse, Kalu, Nkunda, Buyinza, Okumu, and Klose Karoline, *An Assessment of Uganda’s Progressive Approach to Refugee Management*, 25–6.

that further help to incorporate refugees into society. It has argued that Uganda's Pan-African ideology and historical close ties with neighboring populations have led to more open policies. Other factors like Uganda's geographical location in a conflict-prone region, relative political stability, and good cooperation with UNHCR, which facilitate the implementation of permissive refugee policies, only motivate the Pan-African ideology and reinforce the historical ties. Uganda's "open-border" policy addresses the specific challenges of its refugees and allows local integration, which makes Uganda an immediate destination for refugees from different countries.

IV. CONCLUSION AND RECOMMENDATIONS

This thesis asked the following question. Why does Uganda host more refugees than other countries in the GLR, specifically Kenya? The previous chapters argued that two main factors shape whether countries in the same geographical region adopt more restrictive or more open refugee policies: historical ties to refugee populations and the political rhetoric surrounding refugees. In Kenya, weak and conflictual ties with Somalis have enabled politicians to depict refugees as security threats and undeserving of the benefits they receive. In Uganda, Pan-African ideology and historical close ties with neighboring populations have led to more open policies. In both countries, the policies have been self-reinforcing, which is to say, the outcomes of Kenya's policies have led to more restrictions on refugees that have lowered the quantity and quality of their protection while Uganda's permissive policies have allowed progressive programs leading to many more refugees.

In Kenya, securitizing refugees, especially Somalis, led to the adoption of restrictive policies for purposes of protecting national interests as opposed to the international refugee-protection regime. Consequently, Kenyan authorities adopted new refugee policies in order to reduce the number of refugees in the country and restrict the rest into camps. The new policies have not solved Kenya's security problems. The successful terrorist attacks by al-Shabaab demonstrate the failure of Kenya's new refugee policies in containing insecurity and highlight the terrorists' ability to exploit the existing inequalities within the Kenyan communities. Securitizing refugees has shown that Kenya uses refugees as scapegoats for its failure to address the security problem in order to balance some of its other challenges.

In contrast, Uganda perceives refugees as victims of violence and has adopted policies that respond to protection of refugee rights and freedoms. Uganda's permissive policies, which allow local integration, have enabled it to implement programs for the benefit of both the refugees and their hosts, making them self-reliant, reducing the cost of their administration, and promoting coexistence, thereby leading to management programs that further help to incorporate refugees into society.

Subsequently, the analysis of the theories suggests that countries may reject or accept based on the theoretical assumptions. Whereas countries may not be making their decision on whether to reject or accept to host refugees, some of the theories can explain the country's decision to turn away refugees. More important, the population theory can explain Kenya's restrictive policy and programs of encampment policy, limits on the number of refugees Kenya can accommodate. On the contrary, the population theory is inadequate to explain why Uganda hosts many more refugees than other countries in the GLR. The population theory suggests that some countries accept to receive other people because of the benefits that accrue from their hosting.

Additionally, the theories are inadequate to explain the historical ties with the refugee population and the spirit of Pan-Africanism that drive both Kenya's and Uganda's policies. Kenya's securitizing of refugees is because of its weak and contradictory historical ties with the Somalis, who in 1963–67 wanted to secede from Kenya in order to join their counterparts in Somalia. Also, the theories do not explain why Uganda's spirit of Pan-Africanism influences the adoption of permissive refugee policies. Uganda accepts all refugees from all over the world and does not segregate any people because of their race, religion, nationality, or political affiliation.

In view of the factors that influence the country's policies, this chapter addresses three issues: why it is important to know the politics surrounding refugees in the GLR, areas that need further research, and policy implications/recommendations. Section A summarizes the importance of the research, Section B recommends areas for further research, Section C explores policy recommendations, and Section D concludes the research.

A. IMPORTANCE OF THE RESEARCH

As sub-Saharan Africa continues to host the largest refugee population in the world and with the protracted conflicts in the GLR, especially in Burundi, DRC, Somalia, and South Sudan,²²⁷ crucially, such conflicts will likely continue to push many more people

²²⁷ UNHCR, "Global Appeal 2018–2019."

out of their countries to seek refuge in relatively peaceful nations. The 2016 UNHCR report indicates that some of the countries that accept refugees are economically poor, however,²²⁸ and some have numerous other internal challenges including explosive population growth, unemployment, insecurity, corruption, and power and infrastructure constraints.²²⁹ Even more, their successful refugee policies, like local integration, depend on the availability of land, which is increasingly becoming scarce because of explosive population growth. The uncontrolled movement of refugees into countries with inadequate resources raises serious concerns whether such countries will sustain hosting more refugees.

Therefore, policy-makers need to know that a poor country like Uganda, faced with other challenges, but with permissive refugee policies, can effectively host a significant number of refugees and, simultaneously, maintain its stability. The ability to host while maintaining stability does not mean that hosting refugees is without challenges. In fact, refugees exert a lot of pressure on host nations' budgets and their communities by competing for scarce resources like wood-fuel, food, water, health facilities, schools, and roads,²³⁰ but these challenges can be mitigated by implementing programs that assist both refugees and their hosts.

Additionally, whereas refugees pose significant challenges to host nations, benefits also accrue from hosting them. Shellito observes that refugees are a resource for development, which some countries have not realized.²³¹ Refugees may serve as a source of inexpensive labor and, at the same time, provide a market for domestically produced items. This research can be used to assist policy makers in the GLR looking for solutions to the protracted refugee crisis, to identify the most effective refugee policies and programs that require the fewest resources, maintain national security, improve the quality of refugee

²²⁸ UNHCR, "Global Trends: Forced Displacement in 2016."

²²⁹ "U.S. Relations with Uganda," U.S. Department of State, 2017.

²³⁰ Shellito, "The Economic Effect of Refugee Crises on Host Countries and Implications for the Lebanese Case," 2.

²³¹ Shellito, 2.

protection, and above all, benefit both refugees and their host communities. Thus, the analysis of Kenya's and Uganda's different refugee policies can significantly benefit researchers to identify refugee policies and programs that respond to the refugee crisis, mitigate the security challenges, and benefit both refugees and their host communities. Also, the research can be used by organizations like the UNHCR that handle refugees, to identify key areas that need immediate attention.

B. AREAS FOR FURTHER RESEARCH

The success of local integration, which remains the only viable durable solution for the protracted refugee situation in the GLR, may not be viable in the future. Its success relies on the availability of land, which is becoming scarce due to population growth. Whereas Uganda is known for its "open door" refugee policy, it cannot manage the current burden alone, yet forceful repatriation contradicts international law.²³² The dilemma calls for further research on how protracted refugee situations are best addressed.

Whereas the international legal frameworks on refugees are universal, there is limited literature on why countries in the GLR adopt different policies to manage refugees. Migration experts often argue that problems associated with specific groups of refugees shape the host nation's restrictive policies. There is need for further research on the extent to which refugees can cause insecurity or how they can contribute to the development on host nations. Understanding this complex situation is not only a matter of academic research, but also necessary for policymakers who are considering enacting restrictive refugee policies including building border fences to curtail refugee entry.

Additionally, although refugees have the right to seek refuge in any country of their choice, under international law, states have a right to deny refugees asylum. Mogire argues that "based on the principle of territorial sovereignty by which states have the right to determine whom they admit into their territory states were given discretion on how to apply

²³² Halima Athumani, "Uganda Hosting Donor Summit to Raise \$8 Billion for Refugees," VOA, June 19, 2017, accessed April 9, 2018, <https://www.voanews.com/a/uganda-international-donor-summit/3906642.html>.

this right.”²³³ States have used the principle of territorial sovereignty to justify some of the unjust and illegal actions against innocent refugees. There is need for further research to establish if the international community can take action against states that violate the principle of territorial sovereignty to violate refugee rights.

C. POLICY RECOMMENDATIONS

As old conflicts in the GLR, especially in Burundi, the DRC, Somalia, and South Sudan, persist, and new ones from non-state actors like the ADF and al-Shabaab emerge, the number of refugees will rise, yet funding for refugee activities is declining. Apparently other durable solutions like repatriation and resettlement seem to be unattainable. Repatriation is not possible because of continued violence in the countries of origin, yet forceful repatriation is legally undesirable and exposes refugees to more danger. Resettlement in a third country is also becoming increasingly difficult because of the negative security perceptions attached to refugees. In the meantime, other countries in the GLR like Kenya and Tanzania, which used to host significant numbers of refugees, have started rejecting them, closing their borders, and enacting laws that lower the numbers and quality of protection. At the same time, countries that are hosting them are economically poor and funding from the UNHCR is also diminishing.

In view of challenges to the protracted situation, this research recommends the following adjustments.

1. The international community should assist countries that are hosting a significant number of refugees in burden sharing and also address the challenges that force people out of their home countries. The UNHCR should continue to facilitate and support voluntary repatriations of refugees to areas where there is relative peace.
2. Host nations should uphold international refugee protection standards that respect the rights and freedoms of refugees. Host nations should perceive refugees not as threats to their national security, but as victims of violence.

²³³ Mogire, “Refugee Realities: Refugee Rights Versus State Security in Kenya and Tanzania,” 21.

Host nations should avoid policies that intend to control and restrict refugees but adopt policies that benefit both refugees and the host communities.

3. The host nations, working together with the refugee agency (UNHCR), should design policies/programs that address protracted refugee situations, away from the usual humanitarian assistance in order to harness the refugee resource. Such programs should empower refugees, facilitate self-reliance, benefit refugees, and also contribute to the economic development of the host nations.

D. CONCLUSION

Although the migration experts suggest three durable solutions to the refugee problem—repatriation, resettlement, and local integration,²³⁴ there are still a number of challenges that make them unrealistic. Voluntary repatriation is not possible in the GLR because of the continuing conflicts in the countries of refugees' origin, while forced repatriation (*refoulement*) is morally illegal even under the 1951 UN Convention. Equally, resettlement in a third country is also becoming difficult because of security reasons, especially after 9/11. The challenges with repatriation and resettlement leave refugees with one opportunity, which is local integration. However, the success of local integration also relies on the availability of land, which is becoming scarce due to population growth. Thus, solving the problems that cause people to flee their homes stands out as the most necessary remedy to the protracted refugee populations.

²³⁴ UNHCR, "Framework for Durable Solutions for Refugees and persons of Concern," Core Group on Durable Solutions (May 2003): 4–5, accessed June 6, 2018. <http://www.unhcr.org/partners/partners/3f1408764/framework-durable-solutions-refugees-persons-concern.html#>.

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